

## **PANDEMIC PRACTICES WORKING GROUP**

### **PUBLIC HEARING THREE: OCT. 31, AFTERNOON SESSION**

Hon. Craig Doran:

Started. Good afternoon, everyone. Thank you so much. You're all incredibly busy people and we are grateful that you have joined us today. My thanks to the folks who are about to be presenters, we will introduce you in a moment. My thanks to everyone who has participated in this process, folks that are here with us today, folks that are watching us on the live stream. In case you are watching us on the live stream, you're not sure what this is, this is the Pandemic Practices Working Group. This is our third and final in-person public hearing, although we're not going to close the door on input. Very important, we want to mention this. If you are within the sound of my voice and you have information that you would like this group to consider, please email your submissions to [ppwg@nycourts.gov](mailto:ppwg@nycourts.gov). That's our email address.

We will receive any and all input from anyone that wants to offer guidance to us as we accomplish our mission and finalize our report. And for those that perhaps weren't here this morning, I'm not going to repeat everything that I said. But we are a working group of the New York State Commission to reimagine the future of New York's Courts. And our mission as a working group is really stated in two components. One is we are evaluating the protocols, technology practices, et cetera, that the justice system and more specifically the court system and its partners in justice implemented during the pandemic. We evaluate those items with a view toward hearing input from as many different people as we can possibly get to, as many different stakeholders, from all corners of this wonderfully diverse and very, very big state with a lot of interests.

So, we, with your help and your input, we'll hear suggestions and we will craft our final report which will make recommendations to the leaders in the court system as to what practices, policies, technology were utilized during the pandemic that we should take with us into what I like to refer to as the new, better than normal.

We've learned an awful lot. We've gotten better at a lot of things and we have to be very careful to use this rare moment in time to make ourselves better. And in order to do that, we have to listen. We have to hear what those that need justice, those that seek justice, need from their court system. And how can we use these protocols, policies, technology to enhance what we do for the people of the state? I think it's safe to say we would very much like to continue the tradition of the New York Justice system being the best in the country. And that's a tall order. We're certainly up to the challenge and our mission is to use this moment in time that we have to make ourselves better. The second component of our mission is to make recommendations to the leaders in the

court system as to what should the playbook look like when court operations are interrupted again.

What can we do to learn from the pandemic that we've all experienced together? And what can we do to make sure that those measures that we all grappled with in March and April, May and on into 2020 and then into 2021 and then into 2022, which of those measures should we recommend be part of the best practices, so to speak, the playbook? I can't think of a better phrase that we would like to suggest be the guidance for those that are making the decisions next time court operations are interrupted. God forbid there be another pandemic. Certainly, we can count on weather, situations that might interrupt our operations. Other things, as I said, it's an enormous state. Every day in this state there are things that occur, challenges that occur that interrupt our ability to keep our courts as accessible and open as we'd like to.

That's our mission. You're all here to help us get there. And with that, I want to first acknowledge the very dedicated members of the Pandemic Practices Working Group who are up here with me for our afternoon panel to hear the testimony and engage our presenters with questions and comments. I'm going to start to my left with the honorable Alicea Elloras-Ally. And Judge Ally has been a very, very active member of our working group on many of our virtual listening sessions, I should say. Those of you that have been following our work, you know that we have in addition to the in-person public hearings that we're having, which will have us close to a hundred witnesses we will have heard from when we're all done, we've also held in excess of 30 remote listening sessions throughout the summer months.

And Judge Elloras-Ally I know was actively involved in those because she was on several with me. And when she's not working on the Pandemic Practices Working Group, Judge Ally is a family court judge in Kings County. And I want to acknowledge... And I won't say it is a better half, maybe other half the Honorable Shah Ally who's also with us. And he happens to wear many hats, but one of them is he is the president of the Asian American Judges Association of New York State. We're honored to have you here with us today in the crowd, in the audience. Feel free to speak up if you want, at the appropriate time. But you've been an active participant and your association has provided great input to us. We appreciate that, as well. We're glad you're with us.

Next to Judge Ally is the honorable James Murphy, who is the administrative judge in the Fifth Judicial District. For those of you following at home, that's the Syracuse area, Onondaga County, the surrounding area up into the North Country. Judge Murphy always likes to complain about the size of his district and how overworked he is, traveling all over the place. But a good friend and a great leader in our court system statewide, but in particular in central New York.

To my immediate left is Scott Reents. Scott is a very, very active member of our working group. Scott is what we refer to as the reporter. And Scott will be charged with the responsibility of drafting our final report and

recommendations that will ultimately go to the leaders in the court system. Scott, thank you for participating, being with us, for all you have done and you're about to do.

To my right, I'm not going to even look at Judge Amaker. I know she's smiling cause Judge Amaker is always smiling. Notwithstanding her enormous responsibilities, Judge Amaker wears a couple of hats, in addition to many others that we probably don't even know about. But Judge Amaker is the Deputy Chief Administrative Judge in the Office of Court Administration, New York State Courts, for management support. Judge Amaker is also the administrative judge for the criminal courts in New York City. You can imagine what is on Judge Amaker's plate every day, and she continues to smile and be present and be engaged in these efforts. We're grateful for you and all the work that you do for all of us, not only with this effort, but everything else you do for us in the court system. Thank you so much for being with us.

Next to Judge Amaker is the Honorable Patria Frias-Colon, who is the supervising judge of the New York City Civil Courts in Queens County. And again, I sound like a broken record, I know. But one of the benefits we have with this Pandemic Practices Working Group is the engagement of every member. And Judge Colon, I also know this has been engaged, active, vigorous, supportive of our efforts and involved in many of our... I think this is your second in-person hearing, and I know you were involved in numerous of those remote listening sessions. We're so happy to have you up here with us. Thank you.

And last but certainly not least, our attorney. Jessica Cherry is an associate council for the Office of Court Administration. We don't have Jessica up here because we're worried about getting in trouble. We have Jessica up here because Jessica is an integral component of the court systems, policies, protocols, and frankly, we need to have Jessica's engagement in these efforts because our recommendations, we of course hope will be implemented, and Jessica will have a lot to do with that. Jessica, we're so thrilled you gave us a good chunk of your day to be. You've been here all morning; you're going to set up here all afternoon. We're thrilled to have you with us, as well.

Now to our panel of presenters, and you will agree with me, we have a very robust afternoon. We have a lot of work to do, so we're going to get right to it. But I do want to acknowledge and recognize the members of the panel in a couple of minutes. When I'm done acknowledging all of you, we're going to ask each of you to give us about five minutes if you could, of a little bit of an overview of what you want us to hear, what you want us to implement or recommend in our proposals that we will turn over to the court leaders, and then we will engage you, perhaps, in some questions. You can ask each other questions; you can make comments after you've already taken your turn.

We want this to be... It has to be formal; we have to stay on time, but we also don't want you to feel constrained if you hear something that you want to follow up on or make comments upon. So, to my left, to your right, if you're in

the audience, first is Danielle Tarantolo, who is the director of the Special Litigation Unit at the New York Legal Assistance Group. And in a minute, you'll be up. I'm just going to acknowledge the rest of the panel.

Joining us shortly, we understand she is on her way, is Lisa Schreibersdorf, who is the executive director of the Brooklyn Defenders Services. Next, we have Wantee Ramkaran, who's program manager for the New York Justice Initiatives pro bono net. Thank you for being with us. We're thrilled to have you here. And then we have Laura Russell, who's the director of the Family Domestic Violence Unit of the Legal Aid Society, and also Melissa Friedman, who is the director of Child Welfare Training at the Legal Aid Society. Thank you both for being here from the Legal Aid Society, a huge organization in the city, but also statewide. Critical that we have your input on how we did and how you'd like us to do moving into the future.

Next, we have Heather Lothrop, who is the supervising family law attorney, the Domestic Violence Project at the Urban Justice Center. Thank you for being with us. And last but certainly not least, we have Marcia Estrada who is the chapter coordinator of Sepa Mujer. We're very happy to have you with us, as well. And I just want to let everybody know that Ms. Estrada is taking advantage of the services of our interpreters, so please don't be distracted by that, and we'll try to do our best to make sure that that goes smoothly. We're very happy to have you with us. Thank you. With that Ms. Tarantolo, whenever you're ready. The floor is yours.

Danielle Tarantolo: Thank you so much. Good afternoon, your Honor. Good afternoon, honorable members of the Working Group. I am Danielle Tarantolo. I'm the director of the Special Litigation Unit at the New York Legal Assistance Group or NYLAG. And I'm very grateful for the opportunity to testify on behalf of NYLAG today. NYLAG is a leading civil services organization that combats economic, racial, and social injustice by advocating for people experiencing poverty. Since the outset of the pandemic, NYLAG has helped thousands of New York City residents in legal proceedings throughout the New York courts, including tenants fighting eviction proceedings in housing court, domestic violence, victims seeking orders of protection in family court, consumers opposing improper debt collection in civil court, and many others. In July 2021, NYLAG released an issue brief called Access to Justice in Virtual Court Proceedings, Lessons from COVID 19 and recommendations for New York Courts, which we have also submitted in connection with my testimony today. I'm going to focus on three of the recommendations presented in that report, which remain highly relevant as the courts resume in person proceedings.

First, New York courts must provide full, consistent access to court files and case documents. During the pandemic, the physical closure of court facilities posed unique challenges. But unfortunately, reopening the court buildings has not fixed this problem. In the New York City Civil courts, for example, plaintiff's attorneys can file papers through the electronic EDDS system, but NYLAG attorneys and our clients do not have access to that system, and the court is not

creating any physical copies of the papers for the court files. Similarly, in housing court, older case files are unavailable in the NYSCEF electronic filing system. These problems have real results. Our NYLAG lawyers cannot review their client's court files and cannot provide effective representation to their clients facing eviction and debt collection in these proceedings.

Second, New York courts must provide clear, reliable procedures by which litigants with disabilities may request accommodations. Many of NYLAG's clients who are facing eviction in housing court, for example, have disabilities that make it impossible for them to appear in person. Yet, the requests that are made for virtual appearances or other accommodations are not handled in a uniform manner, since each one is reviewed by whichever judge is presiding over the case, and it does not appear, from our perspective, that the court has provided sufficient guidance or training on when these requests should be granted.

The situation in civil court is even worse because there is no specific presiding judge assigned to each case. As a result, if a litigant requires a disability accommodation, there is often no judge to even review the request. Expanding virtual access for individuals with disabilities, but also for others, would make our court system fairer and more accessible. Since the pandemic, the courts have now developed the capacity to conduct virtual court proceedings effectively and they should expand access to virtual proceedings, not just to those with disabilities, but others who face undue burden and expense from in-court appearances, such as those who reside outside of New York City.

Third, and critically, given how much the court system has been in flux since the pandemic, New York courts must provide timely, informative notices to litigants, and publish clear and consistent written procedures. With respect to notice, we are seeing extensive failures in family court in particular. Since the family courts did not schedule certain non-emergency matters during much of the pandemic, many proceedings are now being abruptly scheduled for first appearances long after they were filed. Many of NYLAG's clients have not received adequate or timely notices of these appearances, and thus have failed to appear. Their cases were then dismissed, sending them to the back of the line to refile. In addition, judges have made inconsistent and arbitrary decisions about when to hold proceedings virtually or in-person, without providing adequate advanced notice to litigants. A last-minute switch from a virtual appearance to a live appearance causes havoc for NYLAG's clients, who often plan far in advance for in-person appearances by, for example, arranging to take time off work or arranging for childcare.

An even more widespread problem is the court's failure to develop, implement and publicize clear and consistent procedures. And this is true across all the courts in which NYLAG practices. It has been, for example, egregious in the family courts where even such fundamental questions as how evidence is presented during virtual trials is inconsistent across judges and poorly explained to litigants. The family housing and civil courts should each issue comprehensive

best practices to be followed across judges and across courthouses, based on feedback from litigants and the bar. Thank you for the opportunity to testify today.

Hon. Craig Doran: Thank you very much. And we said this earlier, you weren't here this morning, but we appreciate your candor and frankly we appreciate your constructive criticism. I meant what I said earlier when I indicated that we must do better and we can't do that unless folks are willing, as you've just done, to share with us sometimes difficult to hear things that we're not so great at. So, thank you, and I want to see if any of my fellow panel members have any questions for you or comments.

Hon. Patria Frias-Colón: Welcome and thank you so much for your comments. As the supervising judge in Queens County, I certainly maintain an open-door policy and first I want to thank you for those comments because they are very critically important. It's in particular the comments surrounding accommodations for people with disabilities and how that's lacking because you don't know which judge is assigned to the case. My immediate recommendation is certainly reaching out to the clerk of the part and also to the supervising judge. Because you're right, in civil court, given the nature of it, there is a variety of circular... We circulate our judges to all the parts, but I know NYLAG has been incredibly helpful for us in Queens in making themselves accessible in creative ways to care for them. So, what recommendations would you have, for example, given that reality of the civil court, in terms of the access for your self-represented clients that you're helping?

Danielle Tarantolo: Yes. Thank you, your Honor. And many thanks to all of you. I mean my comments with the utmost respect for the challenges that face the court system, and in full recognition of the fact that NYLAG's clients are a particular population of New York residents who face the most difficult challenges in accessing our court system. With respect to the civil court, I think my colleagues who practice there daily might have some very concrete recommendations for how to do this. But I think, generally, and this is our experience across the courts, so long as there is a mechanism in place that is reliable and it's very clearly publicized, and that it can operate in real time. I think one of the challenges that we face is that if we're not in a position to request the accommodation until it might be too late, for example, it is a court appearance that's happening and the client has not been able to request an accommodation in advance, that's not an effective method and it puts the clients at too much risk of prejudice. Thank you.

Jessica Cherry: Yes. Hi. Thank you again for all of your comments. Just a brief clarifying question to make sure I understood. When you were speaking in regard to the full and consist, the access to files, is that a problem that preceded the pandemic and in what context does that normally arise where you have this issue?

Danielle Tarantolo: I do believe that there have always been challenges in accessing files. My understanding, and I believe this cuts across the courts, though my colleagues

who are in each court would have a more precise answer, is that previously there was always a backup of there being a paper court file in the court building that all litigants and members of the public, at least in theory could access. That process was not always seamless, but that was what was there in principle. And that may not have been the most technologically advanced, but it was fundamentally reliable. And during the pandemic, there was the change that was a good change to permitting electronic filing and digitizing files, but it hasn't been carried all the way through. There's sort of a patchwork of access to digital files without a redundant fallback to a paper file.

Jessica Cherry: Thank you.

Danielle Tarantolo: Thank you.

Hon. Craig Doran: Anybody else? Judge Murphy?

Hon. James Murphy: I practice upstate, so I can't profess to understand exactly everything you're talking about. But you mentioned a number of deficiencies in the notices that went out. I know we heard in Albany, when we were up there that and implemented this change, actually, I did right after, is that a lot of the notices contain general contact information, phone numbers. And so, what we had changed was, send it to the IT or the people in that building so that if somebody was having difficulty accessing virtual proceeding right then and there, even though to avoid a judge issuing a default against them, because they didn't believe they showed up, but yet they were just struggling. And that seemed to work a lot.

And also, I think we heard this morning some of the information... And I don't know how to solve this, but a lot of when we resent notices, all we had was mailing addresses. And of course, a lot of people had moved during COVID, and a lot of different issues. And I don't know if there's a better way of notices, but I'd be curious to hear from any of the people in the trenches, I guess, down in your courts as to what would be the best way to contact people. And maybe we need to do a better job eliciting that introductory information. Get email addresses, which we never would've thought to ask for before this, but things like that, I think, is something that we certainly could improve on.

Danielle Tarantolo: Your Honor, thank you for that question. And I think to tease out, I think there are at least a few kinds of notice problems. I think during the pandemic when virtually all proceedings were virtual, the challenges that our clients and even our attorneys faced did have to do with receiving actionable information regarding the technical aspects of a virtual court proceeding. And I think that what the solution that Your Honor described is something that would be effective for addressing at least some of those questions. I think that now that we've moved to a hybrid phase, there's an additional layer which is actually giving people sufficient advanced notice of whether they are having an in-person court proceeding or a virtual court proceeding. And as I was explaining, I think, again, for many of us, perhaps the difference is not particularly

substantial, and we either get our act together at the last minute and go to court, or we don't.

But for NYLAG's clients, an in-person court proceeding is a very different thing that takes a lot of preparation and frankly can cause a lot of hardship. When our clients are notified at the very last minute that something they thought might be virtual is in fact going to happen live because that's the judge's preference, it upends their ability to comply.

And then the third issue, which I think is also important is how on the back end can... If these notice failures... As you note some people have changed addresses, there may not be an effective way to contact them. There may be other obstacles. How on the back end can the courts mitigate the prejudice from those inevitable failures? And from what I understand from my colleagues who practice in the family court, there is a professed policy not to dismiss cases for a failure to appear in circumstances like the one I described. But in fact, some cases are getting dismissed anyway. How do we prevent that from happening and how do we recognize in advance that there are going to be failures and make sure that the burden of the failure is not born by the litigant? Thank you.

Hon. Craig Doran: Anybody else? Thank you. Thank you very much. I'm sure we can talk with you a lot longer. We have a lot of things to discuss. We look forward to your submission. You'll submit that report to us. Can I give you a brief homework assignment?

Danielle Tarantolo: Of course.

Hon. Craig Doran: And I did this with a couple of folks this morning. One of the things that we are going to have to do as we begin to put our final recommendations together is strike a balance between control by the official presiding over the proceedings, whether it be a judge or a referee, and uniformity or predictability for litigants. So, if we are operating in an environment where, for example, we say certain types of proceedings in certain courts are presumptively virtual or presumptively in-person, and the presumption may be overcome by the presiding official making a determination based on certain factors, what do you think those factors should be and how and when should that determination be made?

And I hear what you're saying that oftentimes the determination is made late. It's made maybe day of proceeding and that imposes an awful hardship on litigants. That determination might be designed to make it easier for a litigant on one or the other side of a controversy who perhaps has an illness or can't come. So, your homework assignment, should you choose to accept it, is to give us what do you think those factors ought to be in overcoming a presumption, and how and when does that determination get made? We don't have time now, but if you wouldn't mind doing that, we'd benefit from your input.



Danielle Tarantolo: Yes. Thank you, your Honor. I understand the assignment we accept and we will absolutely follow-up.

Hon. Craig Doran: Excellent. Thank you. Thank you, thank you, thank you. And I believe next up is Lisa Schreibersdorf

Lisa Schreibersdorf: Perfect.

Hon. Craig Doran: Thank you. Thank you. We introduced you already when you were on your way here. Thank you for being here. We appreciate your presence. The floor is yours, and I want to make sure you know that we did acknowledge you are the executive director of Brooklyn Defender Services. Welcome. We're happy you're here. The floor is yours.

Lisa Schreibersdorf: Thanks so much. Today I'm also speaking on behalf of the Chief Defenders Association of New York as a former president, so hopefully most of what I'll say will... I think my colleagues around the state would agree with and that organization's taking these positions. My organization represents people who are arrested, charged with crimes and also people who are facing Article 10 proceedings in family court. And we do a lot of other work including housing court and lots and lots of different things, but I really want to focus my testimony today on those two spaces. We are the primary provider for abuse and neglect charges against people in family court. And during the pandemic, we found a lot of problems around people who were either in the middle of proceedings, where they were separated from their children, and we found a huge number of problems with cases where ACS was seeking to remove children from the family.

And we also had a lot of problems with criminal cases, particularly around intake arraignments and really in-person matters or matters that had the same kind of urgency let's just say 17070 or 18080 appearance, sort of equating it to a 1028 or a 1027 hearing in family court. So, I want to kind of focus on what I felt... You said to be blunt. And anybody who knows me knows I am always direct, but I do really pride myself on trying to work out most of the problems, and I'm here in the spirit of hoping to improve things. I was really, really disheartened, particularly at the very beginning, but even throughout the pandemic around the response of OCA. I found it baffling at times. I felt like it was inside out. They were doing virtual when they should have done live. They were doing in-person when they should have been virtual. They waited too long; it was a lot of delay. But then when they made a decision, they didn't give us any time to adjust.

I felt they were kind of callous to the health of the people we represent and their relatives, family members and others. I had that nagging feeling all the time that they somehow felt... The attitudes and the approach taken felt to me the only people that could have ever brought COVID into the courtroom would've been somebody who had been arrested. And rather than treated as if everyone in that building could have it and transmit, and catch it and be at risk

of a serious illness or dying, there was a real different value system in my experience, particularly in criminal court.

In family court, I think the decision was just made to shut it down and that had an also horrible impact on people who were facing very extreme cases. Having said that, I really thought today about what did I want to say? And I know a lot of the focus here is what to do now. And I don't think we can belabor what's already done, but I would say it's very important that we don't recreate. And I think just getting to the point, Judge Doran, that you just mentioned, which was, who's going to decide what's going to be virtual and what's going to be in person? When will that decision be made? I think those are the critical questions, but I feel that we really need to have not just testimony from lawyers and others, but actually collaboration around thinking about what that really needs to look like.

And just sort off the point, I'm on the executive committee of the state bar criminal justice section and there was a discussion about, actually, a rule in commercial cases, which I am completely unfamiliar with. And it seemed like most of the lawyers felt that virtual should be done on consent of both parties. And the judges felt somewhat that was impinging on their responsibilities or their jurisdiction. And so, I think you are in a bit of a moment here where the bar is not going to agree with the way that you're even framing that analysis, which is, when should the judge decide and when, how should the judge decide it? I actually think the question is, who should decide it, and if it should even be the judge?

And yes, I agree that there are a lot of things where OCA could take policies, make policies that certainly in criminal court, where things tend to be a little more standardized, and they can be continued. But we are running into the same problems that you just heard from my colleague here from NYLAG who I never met, who said it way better than I could. But I want to add the fact that it's not just litigants who can at the last-minute change what their schedule is, it's also attorneys. And as public defenders we are treated as sort of the lowest rung in the public legal profession as it is. And to have OCA treat us also like we are not important; I think it was the wrong way to go because we were the ones showing up.

We were the ones who came to court in the height of the pandemic and did arraignments. Lots of my staff came in, masked up, went into jail cells where our clients were not providing appropriate masking and were treated horribly. And we even got to the point where we had a colleague... I'm just using this example in Queens because it was probably one of the most atrocious of all, had themselves high risk or lived with high-risk people, and they didn't want to go to court, and the client was not being required to come to court, but the attorney was told if they didn't come to court in-person-

PART 1 OF 6 ENDS [00:34:04]

Lisa Schreibersdorf: ...hard to come to court, but the attorney was told if they didn't come to court in person, that they would be relieved from the case. I found that OCA became very heavy-handed with attorneys, there was a lot of threatening, and very weird approach to it. We were trying to work together. I have a lot of attorneys who were older, I had a lot of attorneys who have underlying conditions. Obviously, today it's very different with the vaccines and the vaccine mandate in particular, which does apply to us, and we've worked it through, but I don't feel the respect was given.

I mean, just another example was we saw ourselves as essential workers, and I don't know if you remember the very beginning, you weren't allowed to go out unless you were an essential worker. We were told we essential workers because everybody wanted us to go to court, but when we asked the mayor, and I know this isn't OCA, but I think OCA could have an impact on this, we asked the mayor that we could have that in writing so that if one of our staff was on the subway, they wouldn't get in trouble for being on the subway because they were an essential worker. We couldn't get that. I just want to put out that I think if we were treated with the respect that we brought ourselves to this crisis with, that I think it would've run a lot smoother because a lot of the suggestions we made along the way could have helped make things smoother. What I experienced was pretty much these unilateral decisions that were very quickly made and very quickly implemented. I just want to say it isn't easy for an attorney.

We're allowing our attorneys in my office to work in a hybrid model. They're very effective at home. They can work very hard. We don't even have enough office space anymore in our office because we've added so many people. In a lot of ways, we have public funds. Why would we spend money on more space when people can work somewhat at home and somewhat in the office? If they're asked to come in person on a day that they're expected to be at home, they have a lot of virtual appearances lined up for that day at home, and then all of a sudden, they have to be in person. Family court in particular, when they opened up, I mean it happened in criminal but it was a long time ago and it worked itself through. But family court just created the same, exact problem where you have the same person doing in person and virtual in the same day and very little control over that. I think those are the few things that I just wanted to say more on a general level. I did want to just say really specifically-

Hon. Craig Doran: I apologize for interrupting you. This may have been before you came in here, we've asked everybody to try to limit their introductory comments to five minutes. We want to try to stay on time here. You're also more than welcome to submit written supplemental testimony to what you're saying today, but I just wanted to ask you if we could wrap it up.

Lisa Schreibersdorf: I have one more point to make, and then I'm done. We do have written testimony coming both from chief defenders.

Hon. Craig Doran: Thank you. Go right ahead.

Lisa Schreibersdorf: Going into the future, I went to one of the subcommittee meetings and there seemed to be a lot of discussion about virtual arraignments and criminal, which things should be virtual, could be virtual? I wanted to just make sure I made a record of the fact that myself and the chief defenders all agree that arraignments should not be virtual, that trial should not be virtual, hearing should not be virtual. They should all be in person. Right now in certain counties, misdemeanor pleas and these other proceedings that are not any of those, can be virtual, and we think that ought to be extended to the state. But we do not agree and we know, I know that some of my colleagues on the DA's side, some of the judges, and maybe even some of my own colleagues on my side of the bar here feel strongly, especially Upstate about virtual arraignments. I just wanted to make sure I was very clear about that. In family court, that intake needs to be in person, 10/28 hearings and as well as specially termination of parental rights as well as trials really need to be in person. Thank you.

Hon. Craig Doran: Thank you so much. I'm sorry to hurry you up there.

Lisa Schreibersdorf: No, that's okay.

Hon. Craig Doran: Anybody have any questions or comments? Judge Murphy.

Hon. James Murphy: Just a quick question on the virtual arraignments because I want to make sure I'm clear. You said no virtual arraignments but then you seem to say it was okay in some misdemeanors.

Lisa Schreibersdorf: No, that's for police.

Hon. James Murphy: Okay. Just for police.

Lisa Schreibersdorf: Police on misdemeanors would be acceptable if there's no jail sentence, as is currently.

Hon. James Murphy: Because we heard some of that this morning. Not rather than have an absolute, are there some things that may be amenable to that? I don't know. Some places Upstate have played around with SCIs because it's already, the deal has been cut. Superior Court Information, up there, that's what they'll do. They talk to the DA; they've all worked out a plea and now they're just coming in to finalize that superior court information.

Lisa Schreibersdorf: I recognize that would be efficient, but we really oppose it. The DAs here oppose that as well.

Hon. James Murphy: I'm just trying to find out what the objection is.

Lisa Schreibersdorf: We don't agree that a plea, even if it's worked out, because if the client is not there and we can't communicate with the client in the moment there, and that doesn't work very well on virtual, something could come up. There could be a

question about immigration, there could be something else that we weren't able to resolve.

Hon. James Murphy: Nope, that's perfect because that's the segue I was going to ask you about. Is your objection that the defendant and the defense attorney are not in the same place?

Lisa Schreibersdorf: That is the biggest part of the objection.

Hon. James Murphy: Because Upstate, we have arranged in some instances for, and this is with collaboration with the public defender in some counties with the Article 18B assigned counsel panel and others to have a location where the defense attorney and the defendant are in the same spot but the judge and possibly the DA or whoever are remote. Are you opposed to that, or because that's what I understood to be the same big objection and I agree with you? There's no ability to have a rapport with your client, there's no ability to have a confidential communication with your client, or God forbid they're confused, how do you fix that when you're on a virtual? But that seemed to be agreeable to most of the stakeholders Upstate.

Lisa Schreibersdorf: Yeah. I mean they have a lot, much longer distances to travel and I recognize that being a big issue.

Hon. James Murphy: I think they, it's just, again, it worked out. They don't want regular calendars all the time.

Lisa Schreibersdorf: I would need to know a little more about that and see how it would apply in the city and other places, and I think my colleagues Upstate probably, before we would really create a situation where that was the rule, we would have to have a lot of guardrails around something like that and would have to be on the consent of both parties and things like that. But fundamentally, I'm very concerned and I think the DAs down here are concerned that it may turn out that the judge didn't pick up on the fact that maybe that person wasn't really understanding, maybe that person's developmentally disabled or there's something else going on and the attorney didn't even say anything or pick up on. That could really, I think call into question a conviction and I'm just have my concerns about it, but I think opposition is probably not to do that.

Hon. James Murphy: Thank you.

Hon. Craig Doran: Thank you. Anybody else?

Hon. Patria Frias-Colón: Just really quickly, and this would be for [inaudible 00:41:01] as well. In preparation for this public hearing, did you have an opportunity to reach out to the members that you work with, the self-represented folks, or your clients in terms of what their preferences might be or what their experiences have been in reality?

Lisa Schreibersdorf: I can answer that for our clients. While the clients who were arrested, we did get to see in person and they have been in court, so I think aside from those who have been at Rikers, which has been a pretty horrible place for anybody to be, I think that they've worked that experience out. The beginning was very bad. I think the family court people are the ones that are really impacted by never being in person in their cases and also not being able to file custody petitions and other kinds of petitions that might get them access to their children. Also, we noticed a lot fewer people coming to court because they weren't brought in on that first day. We feel that a lot of our clients have actually waived their rights to really be represented in these cases. Yes, of course we see the impact that it's had on our clients.

Hon. Patria Frias-Colón: Not the impact, but their preference. In other words, we are, as an organization, going out making a statement about this. What is your perspective on it? Not in the person but the person that you're representing.

Lisa Schreibersdorf: Yes, thank you. It depends on the person, and it depends on the situation, right? I mean if have, I think we heard if you have a disability or something, childcare, things like that, people are very glad. But I do want to add one more thing, which is family court asked us to bring people to our office and they would be on video from our office. In a lot of ways the lack of access to those technologies often required people to go somewhere anyway to access that technology. Thank you.

Danielle Tarantolo: To respond, I think your question is what's their preference as to virtual versus live proceedings? Is that the-

Hon. Patria Frias-Colón: Sure, and did you seek out that opinion?

Danielle Tarantolo: Yes, and I think my answer is on behalf of NYLAG that yes, there are just variations among client circumstances. I think we believe from speaking to our clients that there are some irreducible situations where a person has a right to appear in person if they want to, where their credibility is being assessed, where they really need to be in person in order to have meaningful representation from their attorney, but that in situations where someone doesn't want to invoke that right, and they have other factors that make it more just and more accessible for them to appear virtually, then they should have the option of doing that, such as somebody with a disability or frankly somebody who faces undue financial burden or undue expense from having to appear in person for something where it's not really necessary.

Hon. Patria Frias-Colón: Thank you both.

Danielle Tarantolo: Thank you.

Hon. Craig Doran: Thank you. Anybody else? Excellent dialogue. Thank you so much for being here. Next is Wantee Ramkaran, and yes, I'm glad you remembered to do that. I was

going to have to remind you to do that. Thank you so much. As we indicated a moment ago, Ms Ramkaran is the program manager for the New York Justice Initiatives Pro Bono Net. Whenever you are ready.

Wantee Ramkaran: Good afternoon. My name is Wantee Ramkaran, and I am the program manager of New York Justice Initiatives at Pro Bono Net. On behalf of Pro Bono Net, I would like to thank the commission for granting us the opportunity to testify today. Pro Bono Net, or PBN, is a national non-profit organization headquartered in New York City that works to bring the power of the law to all by building digital tools, fostering collaborations with civil legal organizations, and helping individuals of underserved communities advocate for themselves and connect to free legal help. Some of PBN's New York justice initiatives programs include lawhelpnewyork.org Crime Victim Legal Network Help, Tenant Help New York, Live Help, and Law Help Interactive. Post-pandemic, PBN recommends that the New York unified court system should continue to adopt and support digital tools that can bridge the gap between self-represented litigants and access to Justice.

Live help, our online live chat service seeks to increase access to the free legal information written in plain language on lawhelpnewyork.org. To give some perspective, lawhelpnewyork.org is viewed by more than 600,000 users each year. Live Help serves as an additional means of user engagement, assisting over 10,000 users each year. During the pandemic, the increase in live help chats fluctuated between 40% to 75% weekly when New York shelter in place order went into effect in mid-March 2020. In February 2020, there are about 200 chats per week. By the end of 2020, there are about 400 chats per week. Present day, the amount of incoming chats have remained fairly stagnant since the pandemic. In other words, the increased demand has become the norm. Self-represented litigants continue to seek guidance on court procedures and court information, some still expressing how their case has been impacted by the pandemic.

The pandemic further exacerbated civil legal needs among underserved communities. Law Help Interactive, or LHI, another program powered by PBN uses technology to increase access to justice for self-represented litigants by letting them fill out legal documents for free. It minimizes barriers and unnecessary complications associated with creating legal documents by providing self-represented litigants with assistance in the form of free online interviews that yield complex documents in a simple and fast way. In 2020, LHI served one million interviews resulting in about 710,000 legal documents to help put the power of the law into the hands of the people. In LHI's 2020 independent evaluation, we compiled statistics related to the pandemic. The COVID-19 pandemic brought a multitude of new challenges for users with 75% of respondents saying it was harder to access courts as a result of the pandemic, and 46% of respondents saying it was harder to access legal advice and assistance. Further, 44% of respondents reported using LHI as a direct result of the COVID-19 pandemic.

The evaluation found that 96% of end users had their needs very or somewhat well-met, and 96% will use LHI services again. During a time when access to court systems, legal tools, and communication were fundamentally challenged, 93% of end users reported that it was very important for them to have access to LHI services. Furthermore, the COVID-19 crisis fundamentally changed the way many partners delivered services with 91% of respondents reporting a partial or complete shift to remote services. When asked how the COVID 19 crisis impacted how they approach remote legal services, a partner noted, and I quote, "It makes sense to offer remote legal services as one of the many ways we can help the public. Some people have difficulty traveling to receive help in person. Remote services are convenient for many people who cannot take time off of work during the business day. Even after the COVID 19 pandemic is over, we will continue to provide remote services as part of our overall service model."

PBN advocates for the courts to continue adopting and supporting practices that involve digital tools to make courts more accessible for all New Yorkers. Technology has played a crucial role in addressing the challenges created by the pandemic on traditional service delivery models within the legal field, and we foresee technology having a positive impact on self-represented litigants post-pandemic. We, as a community, have a responsibility to do all that we can to eliminate systemic barriers to justice, to center human wellbeing on the design of court [inaudible 00:48:56] and to help ensure that people can successfully participate in civil processes. Thank you.

Hon. Craig Doran: Thank you very much. We know that probono.net is a very engaged and interactive partner with the court system, and we did a lot together during COVID. I suspect that'll continue. Thank you. Anybody have any questions or comments for Ms. Ramkaran? Judge Amaker.

Hon. Tamiko Amaker: Thank you very much for your testimony. Did any of your users have any specific recommendations or complaints about accessing the court during the pandemic?

Wantee Ramkaran: First, thank you, your Honor. Through Live Help, any of the complaints that we received from Live Help chat users about accessing the courts, one of our main references that we would train our operators to send chat users is the COVID page that was created on newyourcourts.gov. Something that I knew that was helpful at the beginning of the pandemic was that there was a COVID-19 help line phone number that they could call in. At the beginning it was great, but as the months went on, we were receiving complaints from chat users that either the hotline was, they were unable to get in contact with someone through the hotline or because of courts that were Upstate in Upstate New York, they weren't able to get in contact with someone there that can give them the specific information that they needed for that court. Yes, the hotline was great at the beginning, but with the increased demand that individuals were needing assistance with, the hotline may have been as helpful in the later months of the pandemic.



Hon. Craig Doran: Anybody else?

Scott Reents: Yeah. Thank you for your testimony. It sounds like an incredibly valuable service. I was wondering if you could just explain a bit how the relationship between your organization and the New York courts, how do you work together? Are you hired to provide services on behalf of the courts, or are you independent and just point people to information about the courts, and what do you think is the right model for how you could work with the courts going forward?

Wantee Ramkaran: Yeah. To begin, Live Help and lawhelpnewyork.org, we do not give legal advice. It's just legal information and referrals that we have through our directory. Currently, our Live Help, which is our chat button, we have collaborated with other websites. One of the websites is Court Help or newyorkcourts.gov. We have worked with newyorkcourts.gov to have the live chat button on certain pages within court help, and they address various legal issues from family to housing to foreclosure and areas as such.

In addition, on court help on newyorkcourts.gov, we have these LHI DIY forms where we can send as referrals through live chat to chat users that come to the site if they need help with a certain form or if they're looking for a form. I guess a recommendation that we can have, and we've had this discussion in the past with individuals from newyorkcourts.gov, is making that webpage more accessible and more user friendly. I think that's something, an obstacle that we see on our end as well on probono.net is that we want to make websites user-friendly. We want it to make the process easier for individual, self-represented litigants because they're already going through a hardship. I think the discussion that needs to be had is embracing technology, getting feedback from users that use newyorkcourts.gov or other legal websites, and what we can do to make these websites more accessible for these individuals.

Hon. Craig Doran: Thank you. Anybody else?

Jessica Cherry: Just to piggyback off of what you just said, not to put you on the spot now, but going forward it would be great if you submitted to us some tangible thoughts or ideas that you have about court site improvements because I know we've all been very interested about website usability for sure. it would be great to have your thoughts on that going forward.

Wantee Ramkaran: I will do. Thank you.

Hon. Craig Doran: Thank you so much for your presentation today. We appreciate the ongoing partnership that we have. Next up is Laura Russell, who is the director of the Family Domestic Violence Unit at the Legal Aid Society. Whenever you're ready. We're ready.

Laura Russell: Thank you. As you just heard, and thank you for having me here, I am the citywide director of the Family DB unit. I would also like to say I have a cold; I

have taken a COVID test daily for 10 days and it is negative, but I am wearing this so that no one else catches my cold.

Hon. Craig Doran: Thank you.

Laura Russell: The Legal Aid Society is the nation's oldest and largest legal services and social justice organization. We advocate the low-income individuals and families across a variety of criminal, civil, and juvenile rights matters. We have an annual caseload of over 300,000 legal matters, and we are unmatched in our depth and breadth of perspective within the legal profession. We operate three major practices, the criminal practice, the civil practice, and the juvenile rights practice. The society civil practice of which I'm a part of, provides comprehensive legal assistance in a broad variety of legal matters representing litigants in most courts within New York City. The family DV unit represents litigants in both family and Supreme Court in an array of family law and matrimonial matters.

My first point is that many of the technology practices and advancement brought forward by COVID should continue. I'm going to start with NYSCEF. As you just heard, I practice in Family and Supreme, so when the court shut down, New York Supreme Courts had NYSCEF. New York Family Courts had EDDS, which forgive me at best was not helpful. It was an email delivery system that emails went into a black hole of hopefully somebody responding when the courts opened. Because as we all know, the courts for custody, visitation, and support matters essentially shut down. My Supreme Court practice in about a month was up and running. I was e-Filing, judges were online. My family court practice was not. I would recommend that we have NYSEF for all the courts. I know that they are rolling it out in family court, and I am grateful to see it in Manhattan Family Court.

I think it needs to be in all the courts, including civil court, including which I know it is in many civil courts, and including in small claims court. It allows access to files which we do not get, the ability to track cases. It is easier for pro se to file, they do not have to take half a day off of work to go to the courthouse between the hours of nine to five unless of course the one e-filing clerk is out to lunch. Then they have to wait an hour or come back. I highly recommend that we move towards a system of NYSCEF and that we have more e-Filing clerks to help pro se litigants so that it is easier to opt into the system and to allow the e-Filing documents.

My next point is regarding virtual appearances. We need flexibility, but we also need uniformity in case types. Currently, certain parts are virtual by default, other parts are in person by default. There's a disparate system. In some courts, if you are a two-attorney case, your case is automatically virtual. If you are pro se, you must come in person. What does that say to a pro se litigant? That attorneys get the privilege and pro se do not. That should be unacceptable. We should have a system whereby case type cases are virtual or in person and then the judge has the discretion, as you've discussed, to change it from one option

to the other based on factors, which I will get you a list of factors. I know you're thinking of that question.

I will also say that, as we've heard, proving a disability is a very lengthy process. When someone is required to be in person and they cannot be in person, the requirement to prove the disability, which has to be a disability, it can't be, "I have children not in school. I have an elderly parent." It has to be a disability. To prove that disability, I have personally had known two people who have defaulted waiting for that disability approval to happen, and they have had to then move to vacate the default and appearances because they have not gotten what they need, which is the ability to not appear in person on cases. We need a streamlined process. We need someone we can call. We need a uniform set of factors, and it needs to be right on the website. Trying to figure out who to submit those papers to off the NYCourts.gov website was a complicated test for me. I can only imagine what it is for pro se litigants.

We also need uniformity. There are some boroughs that are back to everybody coming in at nine 30 and sit and wait till one or five depending upon the court you're in while you're 30, 60 or 90 in a room. In my case, my clients are always in court with me, so I have situations where I'm in person, my clients are with me, my adversary, the attorney for the child, and the courtrooms are not that big, as we all know. I'm sitting there from 9:30 till 12:45, just like before the pandemic. Then I have other parts where I am virtual for the same appearance, the same preliminary conference, the same compliance conference. I have no standards. There's certain boroughs, and as we know, there is no mask requirement anymore, and there are certain boroughs that are still actively telling people to take their mask off when they're speaking. We need uniformity not only in how we're going to appear in court, but also when we're going to appear in court. And we don't need to go back to 35 cases on the calendar at 9:30. No judge can do 35 cases at once. If we're going to go back to some kind of in person, we need to look at a staggered court system like we have had and should had in some counties.

We also, if we're going to do virtual, we need breakout rooms in Teams. If there's an offer on the table. I cannot discuss it with my client while I am on Teams. Going in person, the only one thing it does afford is the ability to second call a case, to come out, to have that conversation and to settle a case. We can do that on Teams, we can do that with breakout rooms. We can do that with second calls. We need to acknowledge that this needs to happen because it is so much easier to settle a case than try it not only for the court's time, but the attorney's time, and the litigants. We need to be more creative with our technology to make sure that we have situations that we could settle cases when they are ready to be settled.

Finally, the courts need uniformity, consistency, and transparency in many regards. For example, the family court shut down to custody and visitation matters and support matters. Because I practiced in Supreme Court, I filed non-divorce cases in Supreme Court so my clients could seek custody and support. I

had a Supreme Court judge on the record tell me that I was lying to them in a nice way, we're friends, that the family court could not be shut down, that this made no sense that he was told it was open. He adjourned the case for a week, comes back a week later, "Ms. Russell, I really have to apologize. I'm so sorry. I did not realize. I was told as a sitting judge that the family court was open and it was not." I was filing in Supreme Court.

Now family Court is very user-friendly compared to Supreme Court. Imagine being a litigant, having to try to navigate Supreme Court just to get custody of a child because family court has essentially not only shut down, but Manhattan Family Court had one sign for one month in English only that said, "We're shut down." It made absolutely no sense. I don't even think, forgive me, that OCA was telling the judiciary exactly what was going on. Otherwise, I doubt that Judge would've in essence told me I was lying to him when he said the courts were shut down. We need some uniformity and consistency. The website offered limited answers. It continues to be a helpful tool, but it is not user-friendly. The website is the first place that people are going to go to find out what's going on in their court system, both lawyers and non-lawyers. Even the phone calls I get that says the courts are closed due to inclement weather is helpful, but the website is where I'm going to go and where litigants are going to go. We really do need a more consistent and uniform website and something that stays up to date much faster.

Hon. Craig Doran: Ms. Russell, I apologize. We're getting close to 10 minutes, and we have other folks in this panel that we want to make sure we get to. If you could just wrap it up in the next minute or two, we'd be grateful.

Laura Russell: Quick point, the courts are playing catch up, and OCA really needs to fill positions. I know that I'm a broken record on this, but it is taking six to nine months in New York City to get a divorce. From the time the final papers are filed to the time that my client gets a judgment of divorce, it is six to nine months. I have family court first appearances of cases that were filed in May. Their first appearance is February of 2023, or they have a first appearance and then they have a seven-month adjournment for support, for custody, for visitation. We need to hire clerks. We obviously need more judges, but I know that's a legislative issue, but I will say that we do need to backfill and we really need to look at how much the courts are having to play backup and how we can fix that creatively so that things are processed in a timely manner. Thank you.

Hon. Craig Doran: Thank you so much. A question or two for Ms. Russell? Go ahead.

Hon. Alicea Elloras-Ally: Thank you for your comments, Ms. Russell. It's nice to see you again.

Laura Russell: Good to see you.

Hon. Alicea Elloras-Ally: Did you have thoughts about what type of cases when you talked about family court that you think should be virtual or any specialty, I know you appear in a lot

of courts, that you think should be a suggested virtual appearance or what phase of the case should be a virtual appearance?

Laura Russell:

The easiest thing to say are compliance conferences or in family court status conferences. I mean, you're going in, you're checking in, you are maybe re-discussing, in my case's custody or visitation, you're seeing what's missing on the discovery end. I don't need to be in person for that, and 90% of the time in Supreme Court, my client doesn't even see the judge anyway. There's a whole middle section of a case that really doesn't need to be in person. I think a preliminary conference or a first appearance, so they meet the judge, they see who the judge is, they get a feeling for the court. It gives them a little bit more respect for the system, and obviously at the end when you're trying to settle a case, nothing settles a case faster than a judge telling you what they feel might happen after trial. I think that is very helpful. Ideally the middle section of certain cases virtual I believe will be fine.

Hon. Alicea Elloras-Ally: Thank you.

Hon. Craig Doran:

Anybody else? By the way, fear not, we're running a little bit behind, but we'll get all caught up and everything's going to be fine. Nobody be stressed out here, and we're going to get to the end of this day and it will have been a remarkable day of very inclusive testimony. Next is Melissa Friedman, who is the director of Child Welfare Training at the Legal Aid Society. Whenever you're ready.

Melissa Friedman:

Thank you very much to the working group for having us here today. We appreciate your time. I just want to make clear that at the Legal Aid Society's Juvenile Rights Practice, we represent 90% of children in the child welfare system in the city. We also represent the majority of children arrested for alleged juvenile delinquent acts.

In responding today, I want to make clear the theme of our testimony, the ways the COVID-19 pandemic reduced Article 10 filings in family court [inaudible 01:07:00] children, families, the court system, and the child welfare system. Moreover, the implementation of virtual appearances increased children's court participation exponentially, access to courts and services for litigants, and in the long run can minimize court delays, enhance efficiency, shorten the duration of child welfare cases themselves, and save both OCA and the child welfare system money. There's a lot to gain from the COVID-19 pandemic here. We ask the courts to reinstate heightened standards for filing child welfare cases, which at the beginning of the pandemic dramatically reduced filings without any discernible negative impact to the children whose lives the court seeks to affect. We're happy to submit a forthcoming Columbia Law Review article on this topic that I authored that will hopefully be a part of our written testimony. We also ask the courts to retain an enhanced remote appearances, better safeguarding litigants rights, increasing efficiency, reducing the-

PART 2 OF 6 ENDS [01:08:04]

Ms. Friedman:

number of court appearances, shortening the length of child welfare and delinquency cases, and ultimately saving money. For example, remote process-based court appearances can very easily be done remotely, avoiding adjournments for failure to appear. Conferences can also be done remotely, again, avoiding adjournments for failure to appear.

We've heard much today. I listened to this morning's testimony before coming here about presumptions that Your Honor is asking about presumptive hearings. We will put more in our written testimony about this, but in short, presumptively hearings should be in person with factors enumerated in which they do not need to be in person. That is our general position on this, but we will flesh that out for you.

Anecdotally, children, families, and stakeholders participated in court appearances at much higher rates when given the option for a virtual appearance. For children, most are already comfortable with the technology, allowing them to participate easily and meaningfully without having to choose between school or a sports activity after school and coming to court.

Moreover, court appearances that are virtual increase the effectiveness of the appearances, allowing access to counsel more quickly, allowing more litigants in the courtroom so that more issues can be discussed and resolved more quickly. And that has a ripple effect, because when more is done in fewer court appearances, the cases are shorter.

On that point, lastly, virtual appearances afford more respect to the litigants, which has often been an issue in family court. As one of my colleagues was just mentioning, you could be called for a 9:00 AM appearance and not actually see a judge until 3:00. The virtual appearances have allowed for people's time to be much more respected. So given the value of remote appearances, video court access must be expanded. This needs to function in two ways.

First of all, litigants must have equal access to remote appearances and must have agency to make decisions about what works for them. Family court continues to allow access to video appearances upon judicial discretion, but there are inconsistencies between judges and insufficient facilities, creating unequal access. OCA must issue maximally permissive standards and guidelines that take into account jurists, litigants, and their counsel.

In addition, technology hubs should be readily available throughout the city. I know that this morning somebody had mentioned in libraries, places like that where people can access these resources in their communities. That will actually also speed up cases by affording people greater access to their counsel. If they don't have the technology to reach them virtually, maybe from their home, they might be able to do so from these technology hubs.

Somebody had also mentioned this afternoon breakout rooms in Teams. That's essential. We really do need to get that in family court. And then we have some other points I'd like to make. E-discovery and e-filing must continue to expand for family court. I think we can all agree on that. We're also having issues with UCMS access right now. The update that was rolled out to UCMS access actually limited the information that defender organizations can receive. We used to be able to search by birthdate and name. We can't do that anymore, which limits our agency on conflict checks. We also are limited in what we can see that's filed on the docket, and that's really a scales of justice issue, because if we have some players in the courtroom who can access everything and some of us who can't, that's a problem. ACS has actually made up some of the ground for us on this occasionally, when they can provide information they have that we don't, but that's a really pressing problem.

And the last point I'd like to make is that we need to retain and enhance remote access to court based services. For example, probation, which relates to our delinquency practice. For youth who need to engage in probation related services, virtual connection to those services is really critical. It allows for higher rates of compliance, lower filings of violations of probation, which then taxes the OCA system far less, et cetera, et cetera, resolving cases more quickly.

Those are all the suggestions I have for the working group at this time, but we will be submitting further written testimony. Thank you.

Hon. Craig Doran: Please do, and thank you so much. Any questions for Ms. Friedman? [inaudible 01:12:35].

Hon. Patria Frias-Colón: Just really quickly, in terms of what I'm hearing is that there's a preferred access to the virtual to continue with the virtual components that we're doing. What has been your experience in terms of a hybrid model where some folks are able to appear virtually and some folks would prefer to come in person? What has been your experience in your agency as well as your clients?

Melissa Friedman: Yes. And Your Honor, I appreciated your earlier question about the client's perspective. So to address this from the client's perspective, first, our clients have, from what I'm hearing from our staff with whom I did many interviews before this, they are really enjoying that access, even if it is hybrid. And we're actually hearing from our staff that they think that judges are getting a fuller picture of our client's perspective even when it's a hybrid model and our client is virtual.

Hon. Patria Frias-Colón: Thank you.

Melissa Friedman: In terms of our staff, there are some struggles with the technology sometimes. That may be on our end sometimes, that may be on the court's end sometimes. So hybrid could certainly be improved, but it definitely has a benefit to our clients.

Hon. Patria Frias-Colón: Thank you.

Jessica Cherry: Yeah, I just wanted to quickly ask, when that UCMS update you spoke about, roughly when did that occur?

Melissa Friedman: So there was a freeze on our ability to get new licenses for UCMS through most of the pandemic, and I believe that the update rolled out, I want to say, maybe six months ago, but I would need to get back to you on that in our written testimony.

Jessica Cherry: Okay. Thank you.

Hon. Tamiko Amaker: Hello, Ms. Friedman. Thank you very much for your testimony. I just wanted to ask you, you touched briefly on e-filing and the e-filing pilot. I just wanted to find out how the attorneys in your agency have found the pilot so far.

Melissa Friedman: My understanding is those that have engaged with it have liked it and preferred it to the EDDS system.

Hon. Tamiko Amaker: Thank you.

Hon. Craig Doran: I think most of us would agree that the quicker we can expand e-filing, the better.

Melissa Friedman: Yes.

Hon. Craig Doran: Yeah.

Melissa Friedman: Yes.

Hon. Craig Doran: Judge Murphy.

Melissa Friedman: Absolutely.

Hon. James Murphy: I want to get this phrase right. I think you said OCA should enact maximally permissive standards.

Melissa Friedman: Yes.

Hon. James Murphy: What do you mean by that?

Melissa Friedman: What I mean by that is that there needs to be a floor of what judges must do, for example, when considering or allowing virtual appearances, but they do need to be permissive to account for litigants' needs, be it parents or children or caseworkers.



Hon. Craig Doran: And those that we've given homework assignments to are going to help us with that very standard that you're proposing.

Melissa Friedman: Absolutely. We will take on that homework, Your Honor.

Hon. Craig Doran: Thank you. Thank you.

Hon. Craig Doran: Anybody else? Okay. Thank you so much, Ms. Friedman. Next is Heather Lothrop, who is the supervising family law attorney at the Domestic Violence Project of the Urban Justice Center. The floor is yours, ma'am, whenever you're ready.

Heather Lothrop: Thank you to the Pandemic Practices Working Group, for the opportunity to testify today. My name is Heather Lothrop, and I am the supervising family law attorney for the Domestic Violence Project at the Urban Justice Center. Our mission at the Domestic Violence Project is to help survivors of domestic violence and their children live free of violence and abuse. We consider domestic violence in any type of intimate relationship, regardless of gender or sexual identity, to be a human rights violation. DVP is one of seven social justice projects of the Urban Justice Center.

Founded in 1981, UJC is a social justice advocacy organization that provides a platform for dynamic advocates to fuel social change. We often defend the rights of people who are overlooked or turned away by other organizations. Our clients represent some of the most diverse ethnic and racial backgrounds in New York City and are low income and working poor litigants. They include trauma survivors, immigrants with limited English proficiency, individuals with disabilities, the deaf and hard of hearing, LGBTQ identifying individuals, and individuals of arranging educational backgrounds.

At DVP, our team of attorneys litigate in all five boroughs of New York City, appearing in family and IDV courts where we represent survivors of intimate partner abuse on their custody visitation, child spousal support, and family offense matters. During the fiscal year of 2022, our program opened over 600 new family law cases.

The family court cannot go back to the pre COVID-19 operations, nor can it remain at the status quo. We find ourselves at an inflection point with an exciting opportunity to truly modernize the court system by improving what has been set in place during the pandemic with thoughtful processes that increase access to justice for all New Yorkers. The responsibility is on the court to implement technology in a way that expands access for litigants, rather than creates additional barriers to those who need the court system most.

Today, I'm going to focus mostly on why virtual court appearances are essential for survivors of domestic violence. I will supplement this testimony though with additional written testimony. Virtual court appearances must continue to exist

as a meaningful option, in particular for survivors of domestic violence. Domestic violence attorneys have been advocating for an element of virtual court for years, but it wasn't until the pandemic that we really saw that realized. Virtual appearances are especially beneficial to trauma survivors, individuals with disabilities, and working parents.

In-person appearances are often dangerous for our clients. I have personally witnessed opposing parties wait for my clients outside of the courthouse. I've needed to help my clients safely exit the court buildings, and I've had to safety plan with my clients around every single in-person appearance. Court appearances are another opportunity for an abusive partner to monitor the whereabouts of a survivor by following them after the proceedings. I have personally been followed and shouted at by an abusive party while accompanying my client. Court officers are not always readily available at a crowded waiting area to monitor for violations of orders of protection or to intervene where there is harassing behavior.

My clients in these situations were terrified, and rightfully so. Court is often the first time a survivor has to see their abuser in person after leaving their relationship. You can imagine how traumatizing it is for a survivor of domestic violence to have to give testimony while their abuser is just a few feet away glaring at them, or worse, mouthing threats or degrading comments, all of which I've witnessed. I've seen clients freeze on the stand, too afraid to say what really happened because the person who hurt them is sitting right there. I've seen clients struggle to balance childcare and work, only to wait in the courthouse all day, often to learn their cases being adjourned.

Since virtual court appearances have begun, many of these safety and logistical concerns were alleviated. Survivors no longer in danger of being followed or approached. We could finally implement strategies to better manage symptoms of PTSD or anxiety by having survivors testify from spaces where they felt more comfortable to talk about their abuse. Now survivors can use creative strategies such as putting a post-it note over the face of the opposing parties [inaudible 01:19:46] have to look directly at them. Also, concerns about childcare and employment have become much more manageable. It is easier for someone to take a break from work than it is to take off the entire day. Survivors did not have to scramble to find someone to watch their children or to pick them up from school.

While in person appearances are valuable, the decision about whether or not to appear for court virtually or in person is a decision best left to the attorney and their client. The attorney and the client can weigh those safety concerns and can figure out the best legal strategy for the case. And for all these reasons, we strongly urge the court system to maintain virtual appearances, especially as an option for survivors. Thank you.

Hon. Craig Doran:

Thank you so much for your presentation today. Anybody have any questions or comments for Ms. Lothrop? Thank you.

Heather Lothrop: Thank you.

Hon. Craig Doran: Thank you very much. Next is Marcia Estrada, who is the chapter coordinator for SEPA Mujer. And just a reminder, Marcia is utilizing the services of an interpreter, so please don't be distracted by that. And we are ready to proceed. Ms. Estrada, thank you for being here and we're ready for your testimony.

Marcia Estrada: Good afternoon. I am Marcia Estrada, chapter coordinator of SEPA Mujer. I am here representing all of our members from Suffolk County, Long Island. Some of our members have had their share of experiences in family court since they are victims of domestic violence or sexual abuse. I would like to share one of their testimonies regarding their different experiences with family court.

For example, Anna Hernandez. She was a victim of violence, domestic violence like physical, psychological, and sexual abuse at the hands of her husband, the father of her two children. She stated, "A complaint was initiated in family court based on a report created by a therapist whom I contacted through my medical insurance. That was the first person I asked for help because I didn't have any other family members. I didn't know anyone besides my husband, my aggressor, and my two children. There was never a police report involved out of fear. I didn't have a phone or the means to do it through the court system. I was referred to SEPA Mujer. I had virtual hearings and in person hearings occasionally. I was worried. I didn't know what to do, and I asked Ms. Marcia to come to court with me.

"Therefore, and based on my experiences, I would like to mention, if it's possible, to improve the following. Depending on the complexity of the cases, then we can have virtual hearings and not in person hearings. It's not easy to go to a hearing and have to face your aggressor. For in-person hearings for the victim to be accompanied by someone else. For the court and other institutions to have available help to fill out forms and documents. For bilingual staff to always be available. For the court to assign an attorney to cover all matters. In my personal case, I was only assigned an attorney for a custody proceeding. For my child support proceeding, I was told to appear on my own."

In addition to Anna, other members have great difficulty with transportation. Having a car in Long Island is very expensive. Many of them prefer to appear virtually and have the option to appear in person if they have any connection problems. And I would like to leave you with this and mention the great need of interpreters. A lot of people end up in longer process for not having interpreters. Thank you. Thank you for listening to SEPA Mujer.

Hon. Craig Doran: Thank you so much for being here today and sharing a very important perspective. Anybody on the panel have any questions or comments for Ms. Estrada?

Hon. Tamiko Amaker: Thank you very much for your testimony, Ms. Estrada. I just have one question. You mentioned that there are some of your clients who may have difficulty with connectivity problems, and if that's the case, is there anything that the court can do to ease that burden so that if they prefer to appear virtually, that they can?

Marcia Estrada: Yes. There's a challenge with connectivity. A lot of these people are not familiarized with technology. In this case, this person preferred to be virtually, but to also have that option being there for them. To have that option to have in person proceedings and to also have help from the court system.

Hon. Tamiko Amaker: Thank you.

Hon. Craig Doran: Anybody else? Thank you so much. Thank you. Thank you to you all. We're going to take a break now while we get the next panel ready. We are a little bit behind, so let's make this break five minutes if we could. And the folks on the next panel, if you could get ready to take your seats up here. And there are four of you, the Honorable Brenda Rivera. Let's see. Let me make sure I got that. Mr. Braverman, Stan German, and Tracey Chance, you are the next up. So the rest of us going to take a five-minute break. We'll see you back here in just about five minutes. Thank you.

All right. We'd like to try to get started if we could have everybody back to where you're supposed to be.

Okay. So our next panel appears ready. And before we get to them, I just want to acknowledge some other folks who have been tremendously helpful today and in our efforts. I mentioned earlier that Scott Rents and Bill Silverman, who are the coaches of our hearing committee, which is a part of our Pandemic Working Group, and they have been responsible for having things go so smoothly. And then I get up here and mess everything up by getting us all behind schedule. But I want to tell you that they have also had the assistance of some incredible young people, I hope they don't mind me calling them young people, who are associates in their respective law firms who have and will as we begin to prepare our final product, do a tremendous amount to make sure that this is a first-class product.

And I want to thank Portia Proctor who is here today with us, and I also want to mention some of the other associates who are not with us today, but I'll betcha they're listening and/or they will watch the livestream. In fact, they'll probably have to watch the livestream so they can write the report. So Wilderness Castillo Dobson and also TJ Ruan and Kelsey Miller, all of whom are about to spend an awful lot of time putting all of this together and making sure that our report is first rate. I also want to thank, I know she's been... There she is. Barbara Mulé, who is so much to all of us who work in the court system. To say Barbara is always there for us would be an understatement, but Barbara has done so much to make sure that these hearings go well. And Barbara, we are grateful for you. Thank you for being you, Barbara. Yes, indeed.

And also, thanks to the intervention of some folks who work in our court system. I mentioned earlier Nancy Barry, who is the chief of operations of the court system, and Nancy helped us today with some volunteers who are greeting folks as they come in. They're probably still out there, but I want to acknowledge and thank Skye Davis and Christine Edwards. If you can hear us out there, we appreciate you. Thank you.

Okay. So with that, we are ready to begin the next panel. And we are very pleased to have with us this afternoon the Honorable Brenda Rivera, who is a judge in the Bronx County Civil Court, Sam Braverman, who is a board member of the New York State Association of Criminal Defense Attorneys, and Stan German, who is the Executive Director of the New York County Defender Services. I believe that Ms. Chance unfortunately could not be with us. Tracey Chance, who is a conflict defender in the Schenectady County Conflict Defender's Office, but we will certainly invite Ms. Chance to submit written testimony. So with that, Judge Rivera, we'd be honored to hear from you whenever you are ready.

Hon. Brenda Rivera: Okay. Good afternoon. I want-

Hon. Craig Doran: Good afternoon.

Hon. Brenda Rivera: I want to thank the members of the commission for volunteering your time to do this important work, to thank the people who have agreed to testify throughout this process, and to thank you for allowing me to testify today. There have been a lot of testimony and discussions regarding the best way to provide services to court users, particularly those who do not have the tools and resources to enable them to utilize court services, whether in person or remotely. Most of the pro se that have appeared before me have been able to participate remotely, even if it is via a smartphone. I have asked litigants and attorneys who have come before me about their preferences, and my experience is that both pro se and attorneys are overwhelmingly in favor of remote appearances than not.

I would recommend commencing with a model that provides for two or three days of remote, a hybrid model, and from there, the court could adapt to doing more days of remote or more days in person, depending on user demands. Although people who have remote access are not the people that are of primary concern. The people we are most concerned do not have internet, computers, or smartphones which would enable them to participate, or they live in remote areas or have medical conditions that make it difficult to present in court.

There has been a lot of testimony regarding savings to going remote. Those savings are monies that should be put back in the community, whether it is utilized to create partnerships within the community to assist with remote access, so whether the courts create offsite locations. The process requires thinking out of the box and creating new and different opportunities to facilitate

participation, which I am confident that this commission will evaluate to the fullest.

I apologize. Some of my testimony, if it is redundant, as I was in court and I missed a lot of the testimony. My main purpose is to address a concern that is equally important to facilitating user participation, and that is quality of work life. It is well known that employees are the employer's biggest asset. Getting employees to be the most productive, providing quality and efficient services to the public cannot occur without a healthy workforce. The federal government, many employers, legal organizations, and law firms have already implemented remote work and have experienced the many benefits of remote work, and many have stated that they will never go back.

I think we understand when it comes to quality of work life issues, mental health, and wellness, people are not quick to come forward to address needs and concerns. This is a topic, although equally important to any topic discussed thus far, has only been addressed superficially, and by superficially, I mean that there's been very limited testimony regarding the effects of remote work on wellness. The testimony thus far has been that court users and attorneys appreciate the time saved in traveling to and from work, time finding parking. There was also testimony as to cost savings and not having to purchase lunch or paying for parking as added benefits.

According to calculations from Global Workforce Analytics, employers can save up to \$11,000 per employee by allowing them to work remotely 50% of the time. It is a proven fact that remote work improves work life balance and enhances productivity. According to a study by our labs, 67% of those who worked from home during the pandemic were more productive than when they worked at an office, and 83% reported that remote work helped their mental health.

There was an article published during the pandemic. I won't go into the details of names, but there were two married judges who gave us a glimpse of their remote workday. It comprised of a morning calendar. Then they broke for lunch where they were able to make lunch together. They had lunch together. Then they did their afternoon calendars. At the end of the workday, they made dinner, had dinner together, and because they saved time and possibly the headache in commuting, they found that they still had energy to do work after work hours. This is just one example of increased productivity, and the fact that they were able to have the comfort of contact with their home and meals with a loved one contributed to their quality of work life.

Other benefits to remote work include the cost savings of reduced dry-cleaning costs, employee healthcare costs, employee copays and their healthcare costs, reduction of the carbon imprint on the environment. And employer savings also include reduced healthcare costs and reduced worker absenteeism. Studies show that the average person commutes an hour to work. My commute from East Bronx to the courthouse can take 45 minutes an hour, and it is very

stressful to many. And that is without taking into consideration the lack of parking. If an employee works 20 years with the courts and commutes two hours a day, they would've spent over 10,000 hours commuting.

My son had to read a book by Malcolm Gladwell called *The Outliers*, where the author states that a person can develop mastery skills by dedicating 10,000 hours to it. So just imagine those 10,000 hours being wasted in a stressful commute versus that time being used to contribute to the person's overall competency and wellness. The reduced stress and time savings from a reduction in commuting time provides immediate benefits to employees, resulting in a more positive and productive workforce.

Where there are two parent families who are both working parents and in single parent families, we know that preparing children for success in life often means managing responsibilities outside of school and work hours. We know all too well that there are not enough hours in a day to get everything done that needs to be done. As a single parent, I'm just going to say that it is very stressful, crazy at times, and a struggle. Thank God that my kids are older, but I felt that I needed to say something on behalf of the current single parents because their voices are not often heard, and they are a big part of the workforce and are a big proportion of court users that have to manage their time, be able to appear during times that do not conflict with work hours or parental responsibilities, such as dropping off and picking up their children from school, and they would benefit from remote appearances.

I urge that we follow the lead of many federal agencies and law firms that have gone remote. I have a sister who works for the Department of Homeland Security and Transportation Security Administration. I remember visiting her one day and when I was on annual leave and she was in a remote meeting, and the topic...

PART 3 OF 6 ENDS [01:42:04]

Hon. Brenda Rivera: was what is the best way to redesign the workforce and the responsibilities so as to maximize remote work? This was really impressive to me because they understand and address the quality of work life issues and the importance of remote work.

My experiences and observations with the courts are that remote benefits are only provided to a select few and that the impression of employee presence or optics as is referred to, is more important than whether there is actual productivity. I believe that people will appreciate the benefits of being able to work remotely and in order to be able to keep that benefit, they will show that they are productive if not more productive. This is proven by studies.

Since the evidence of this discussion is the importance of saving time on wellness. I know the committee will be happy to hear that I plan to be succinct,

especially since we're behind schedule. So I thank you for your time and consideration.

Hon. Craig Doran: Thank you very much your honor and that is an important perspective, one that we haven't heard a lot of testimony about, frankly, the wellness of our own family, our own court family. I will tell you that we've also heard, and I don't mean to cause controversy, well actually I do, but frankly, I think that one of the challenges we have right now in the court system is recruiting employees and we are competing against the private sector that has mastered remoteness and frankly I think that at least needs to be part of our conversation. It will be part of our deliberations as to how we take into consideration your comments and those of others as we make our recommendations. So thank you. Does anybody have any... Judge Murphy?

Hon. James Murphy: I would just follow up on judge Doran's comment that obviously we've been going through historic retirements and in the same vein we've been going through historic hirings and I've been on a lot of hiring panels and never before, until the last probably 12 months, when we reach out to see if someone wants to interview. More often than not, the question is there an opportunity to work remote and that has never occurred before and I think it is something that probably going forward, we're going to have to deal with.

I've also said repeatedly our chief clerks and deputy chief clerks, I'm very concerned about. In addition to our judges, but we put out these protocols and we've done it throughout and they're the ones who 24/7 are... I know because I can see their emails and when they're addressing things, are taxed and I think it's something that we do have to take a look at. I appreciate your comments.

Hon. Brenda Rivera: Thank you.

Scott Reents: Thank you for your comments, I appreciate them as well. I don't work in a courthouse so I'm just asking a factual question. Do you have a sense of what percentage of employees could...? I would imagine there's some employees that need to be in the courthouse, because you're serving a public that's in the courthouse and proceedings that are happening there. But what's the relative proportion there of people who have onsite jobs that absolutely need to be there versus people who could do some or a lot of their work remotely?

Hon. Brenda Rivera: Well I mean there is already some like the [inaudible 01:45:47] parts in the civil court were fully remote. It's been suggested earlier where you have two attorney appearances that they can do remote and so what that means is that a lot of the work, let's say for court attorney, they can do a lot of... If it's research and writing that could be done from home.

I can't really give an estimate as to what I think the percentages are, but I think that there's definitely a way to work a hybrid model so that naturally there has to be some stuff like the trials and when they're close to settling, that



sometimes it takes for the judge or the court attorney to push that will require the presence in court. But there's definite a way... I mean just even in with federal employees you have to be present in some arenas, in some areas and there's no way around that. But there's a lot of room to be able to do the hybrid model.

Hon. Craig Doran: Thank you, anybody else?

Hon. Patria Frias-Colón: Just very quickly, good afternoon, Judge Rivera, it's good to see you again. In terms of the community in the court system and specifically the judges, I'm assuming you're also referring to judges being able to work remotely. So from my perspective in civil court and the need to have a judge present in some of the rotations and the assignments, have you given thought or do you have a suggested approach if that were to be made available to judges?

Hon. Brenda Rivera: So as I stated, it's so important for judges to be present with and handle their cases to be able to push for resolutions and for settlements. The best way would be to do a hybrid model because our presence is needed in court. But as I stated, there's a lot of flexibility and there's a lot of room to be able to do a lot of the remote work in terms of looking at the individual departments because in each of... Well I should say in each of the areas in civil law and in the civil courts, in each of the departments, there's room for flexibility there.

So in terms of how to design it, that's something that I would love to put in writing. But just to say for the purposes of today that there's a lot of flexibility there to be able to design the different parts so that there could be remote access.

Hon. Craig Doran: Thank you. Anybody else? Just before we go to Mr. Braverman, and by the way, this is your ten second warning. One of the challenges we have in this system considering allowing judges and non-judicial staff to work remotely is the variety of courts that we have in this state and the sizes of the various courts.

During the pandemic, we implemented a process in the worst days, when the virus was at its worst, of having what we refer to as platoons. So we would have, for example, 50% of the staff in a given court working remotely and the other 50% working in-person so that if somebody in the courthouse contracted COVID, we wouldn't have to shut that whole office down. The problem is that we have many courts in Judge Murphy's neck of the woods and my neck of the woods where if you have 50% of the staff working remotely, that means you're down to one person.

Because in some of these courts there's two people. That's what we operate with in some of these smaller courts. So that's the challenge. The other thing is of course we have to be fair and there are some job titles in our system that I don't know how we would offer them opportunities to work remotely. So it's something we need to talk about and think about, but we also need to be

mindful of the challenges. But you've given us an important pause in the other topics to think about the wellness of our own family. So thank you so much.

Next up is Sam Braverman who is a board member with a New York State Association of Criminal Defense Lawyers. That was longer than 10 seconds, I apologize, but you're up.

Sam Braverman: [inaudible 01:50:43] judge, you did perfect.

Hon. Craig Doran: Oh thank you.

Sam Braverman: So good afternoon, everybody and thank you very much for having us, this opportunity to speak and what we feel is an interactive position gives us great confidence that you're going to lead us in some direction we need to go.

I've listened to my colleagues earlier today and I got here early so I could hear at least one other panel and I'm not going to reiterate those things. I'm going to pivot from my prepared remarks to something else, to the crust of what I want to hit on. I agree with all my colleagues that there are so many parts in your day-to-day lives, in our day-to-day lives that can really be done remotely. There really are, and the fact is that we have a force against us created a system to address those issues is fabulous and we learn from it, we take from it. That's great.

This is coming again, it's not a pandemic necessarily, maybe it's just super storm Sandy, perhaps it's just a blackout. Perhaps it's just the roof falls in because we didn't spend enough money on infrastructure, whatever the reason is, we're coming back to this again and again and if we don't plan for it, we're stuck reacting to it, and that's not our job. Our job is to plan for things and to get there.

So the group that I represent is a thousand lawyers, we are the criminal defense attorneys around the state. That's our uniform thing. Some are public defenders, some are only for the very richest and everything in between. But we all have one thing in common. We have an absolute belief in the sixth amendment, the article one section 12 of the New York State constitution, that right to trial. And so I would tell you, I would agree with so many things. ECF has been waiting, when's it coming? Right?

Everybody here, well next year in Jerusalem, this is longer than that, right? I want to see it happen. If you want to see a great example of it, federal docket sheet under pacer is exquisite. I can find it. You open up a newspaper, I'm going to find a case, I'll give you every document in that case in five minutes. There's no reason we can't do that. There's no reason we can't have a schedule of appearances. The illusion that we're going to get it all done is... One of my colleagues said, "If we put them all on for 9:30, we're going to be done." I was laughing with my colleague here a moment ago. That's for people who aren't

going three counties in a day. That's for people who aren't... I mean, so for me, three counties in a day means I'm parking three times for \$75, means I'm getting three bridges at \$16 just so I can get to someplace for a one-minute calendar call on a ministerial thing and sometimes they say, "Well the person you're waiting for is not here."

So I agree with all those things. Let me tell you just about trials and sentencing, there's a point at which the state takes the liberty or the life of a person and that has to be an inefficient, time consuming, money consuming spectacle, because we cannot risk that it is not. We have, in every one of our institutions, we have examples from all throughout history of why the trial was the thing, right?

Whatever's important to you, be it Tom Robinson in *To Kill a Mockingbird*, whether it's Jesus of Nazareth in a square in Jerusalem, whether it's the Nuremburg trials, the trial matters. Society must see that we are convinced ourselves before we can convince them that the trial matters. We cannot forsake them for the inconvenience of having to come to court and to deal with them. I get it. I know that we take 12 people or a jury selection, sometimes it takes 500 jurors to seek a group of 12. I did 10 years of murder trials. So I went through in that 10-year period, something on the order of about 6,000 jurors. That's a lot of people. A lot of inconvenience, because I stood over my client and said, "No, we plead not guilty. Go through the process, do it."

Sentencing is another aspect where we cannot forsake them. I read a great quotation from a case called *United States versus Barnes*. This was a case by the seventh Circuit and it says the right to allocution, that ability of the defendant to speak to the sentencing judge is the right to have your request for mercy factored into the sentencing decision. In an age of staggering crime rates and overburden criminal justice systems, courts must continue to cautious to avoid the appearance of dispensing assembly line justice.

I know that you must feel on some days I just can't do another one of these. I've knocked off 50 sentences today and I got 50 more tomorrow. I know that because my colleagues are sitting there on the bench, people I grew up with in the trenches 30 years ago. I know that there are times when we're tired of doing all this work when sometimes we think it doesn't make a difference. Sometimes we think another day in the court is not going to change anyone else's life. I had the great opportunity to go to a hospital and have surgery, have a new hip put in. And my hip doctor had done 4,500 of these and I've done one. So I messed around with a medication he gave me. I said, "I don't want to take this, whatever." And he called. I said, "It's not working." He said, "Oh really? How many of these you do?" I said, "It's my first." He says, "4,500." I said, just like in [inaudible 01:56:39] yes Doctor, I'm going to follow your instructions. Because that's the way it is.

But that's who this group is and that's who this group is. Listening to my colleagues talking to here today was inspiring to me. I loved listening to people

I've never heard of before who come in here and tell you how passionately they do their jobs and thank goodness we have them. I represent the bad people that they were talking about, the people who do abuse others, who are accused of the worst atrocities we do against other people. I don't tell you, you have to like them, but I tell you that if we change the way we handle this, because it's easier, because it'll cost us less money, because on days when we don't have the resources, let's just take from this, steal from this Peter to pay that Paul, we will sacrifice something essential to what we do.

I think that it's changes of liberty. First appearances, bail hearings, suppression hearings, fact findings by judges, trials, and sentences. That's the crux of this where it must be live because there's nothing like sitting next to your client and feeling your client shake. Every hair on their head goes up when they're about to hear a verdict. I've seen people accuse of murder wreck themselves when the jury comes in for a verdict. You don't know what that is. This is not for you. But you guys do because you sit there and you see it every day. We need you to say, "I protect that, because that's why we have a room like this. That's what every courthouse we built looks like the temple of justice." We're asking people to believe it is.

We represent the accused and the accusers, the victims, but most importantly we represent the rest of society. If they don't trust this system, we are in trouble. They have to believe we're doing it the right way. Live trials make that difference. Take the tools that we've developed by force against our will and use them. But they're just tools, they're not solutions. A hammer is brilliant for nails, it'll work on a screw, it's really bad as a saw. You just can't, it doesn't matter how you want it to, it doesn't do it. Take the tools, use them, but please save what must be done. Thank you.

Hon. Craig Doran: Thank you very much Mr. Braverman. I'm sorry we're short on time because I could listen to you talk all day long. But I want to see if some of my colleagues have some questions or comments. Question.

Hon. Tamiko Amaker: Thank you very much for your testimony, Mr. Braverman and I could listen to you all day as well, so thank you for your service as well.

Sam Braverman: Nice to see you again, judge.

Hon. Tamiko Amaker: It's a pleasure to see you, always. So I just have one question with regard to sentencing. So speaking solely about sentencing after trial, are you talking about sentencing even if it's on a plea, a felony plea?

Sam Braverman: So I think that there can be room where it is in everyone's interest to allow some level of remote proceeding. But I think all the stakeholders have to agree. It's like waving a jury. It's one of those things that even if my client says I want to do it, I got to say, and then you got to say, so I think that there are some. But

the fact there's still so many of those are even two things that happen and a lot of pleas even when the deal is done.

One is that the defendant who didn't testify at a trial wants to say something and he needs or she needs to feel like somebody is hearing him and the TV just still doesn't do that for us. The second is there are victims, and I've heard about them today, who still have a right to speak even if there is no trial, as well they should because they are also participants.

If we don't make sure they trust the system, vigilantism is on the next step, next shrink corner. So we have to have that. They also need to see the defendant being sentenced. That is an essential part of their experience. They were traumatized and in a civil case they got to see that verdict. So I do think it can be done, but I think it's a lot more of a waiver and the group consenting than you have to default into that and then ask for an in-person. I'd like the default to be out of the in-person.

Hon. Craig Doran: Anybody else?

Hon. Tamiko Amaker: No, thank you.

Hon. Craig Doran: Question, go ahead, Scott.

Scott Reents: On the last panel we heard, I think one or two people suggest that in domestic violence situations that survivors benefit from appearing remotely, not in the presence of the alleged perpetrator. I was wondering if you have a position on that or your organization as a position on that?

Sam Braverman: Absolutely. It depends on who I'm advocating for. So as a citizen, I'm advocating for accuracy in the judicial system, I'm advocating for a voice for people. I'm advocating for no interference with justice by any means. So as a consumer of the appearance of propriety, I don't want people interfering and threatening witnesses. I'm a criminal defense lawyer, so I have the luxury of only representing one person, just one. Everybody else is responsible for all the others.

So there always has been attention whether it was live or not, on what the risk was to people who had to be there. I've been in courtrooms where my serial rapist was the worst person to anybody who's still alive and was the worst person during trial and that happened in the middle of 9-11 on that particular trial and so we had all these horrors piled up and I remember a woman coming on the stand and testifying against him. She was in a rage, she kept it together. It was a stunning display of her integrity over my clients. It was awful for her; I have no doubt and she had a courage and a strength that many don't have. There is a cost to our system of transparency and one of the costs is if you accuse somebody of a crime, they have a right to face their accusers. I think that

it is, though it is a clear cost, it is a necessary cost for the transparency our system can afford.

Scott Reents: Thank you. So if I understand you and perhaps others who represent criminal defendants might object to a system where domestic violence survivors could-

Sam Braverman: I definitely absolutely do. I also have always concerned when we create categories of victims for which different rules apply, it is a slippery slope I think, for saying these rules apply to certain victims but don't apply to other victims. Therefore, there's an increase of desire to add additional victimization to victims, to therefore deny defendants what the first group is allowed to deny them. I don't think that is the measuring stick. It's a painful cost to be sure, I am aware of it. When I was a prosecutor, I had to shield the victim from somebody else in courtroom, physically. That was my job as the luxury of being in a courtroom where I felt not a threat and I felt like I could defend somebody. But it is a cost and I think it is actually still a necessary cost for the system.

Hon. Craig Doran: Anybody else? Thank you for your perspective.

Sam Braverman: Thank you very much.

Hon. Craig Doran: Just if I could, I want to make a brief comment and maybe a request. First of all, you're very eloquent. I doubt I'll ever have the opportunity unless you represent clients up in the Rochester area, but I'd love to hear one of your closing arguments sometimes

Sam Braverman: Fortunately, I've got 20 counties in New York, 15 in New Jersey, and another dozen federal districts.

Hon. Craig Doran: Wow.

Sam Braverman: Legal terms in my mind is still the best job.

Hon. Craig Doran: So I guess it's a point comment, ask you to think about something. So in the throes of the pandemic, when I and my colleagues who are in court administration were making decisions on a day-to-day basis upstate, where we have public defenders who staff offices that are woefully understaffed and underpaid. Many of our counties, we have the 18-B system where the attorneys are getting paid \$75 an hour to work in a very remote part of the state where we can't even get people to show up.

So in the throes of that scenario, we were asked as administrators, please let us have virtual proceedings by your colleagues.

Sam Braverman: Yes.

Hon. Craig Doran: Who represent defendants up there. We can't staff the arraignments in what can be upwards of 30 town and village courts in some of these counties that are in our area. So please let us have virtual arraignments. So the important consideration here is that you're right, the constitution isn't necessarily efficient, but we also don't do justice in a vacuum and sometimes the decision has to be either no attorney's going to be there or we have a remote arraignment.

So I guess the assignment for you is think about how when we make our recommendations, the playbook for the next time something's interrupted, a blackout, whatever the case may be, how can we reconcile what is a very passionate, and I'm thankful for you and your colleagues to feel very passionate about the constitution. How do we reconcile that with the realities that we face sometimes? So that's the first component of the assignment.

The next component of the assignment is within what you very eloquently state as the philosophical belief that there are components of a criminal proceeding that must be in-person, let me challenge you to reexamine those philosophical thoughts. I know they're very practical for you as well. Is there room in 2022 when perhaps we've gotten better at doing things virtually? Is there room to consider or reevaluate that list that you gave? Are there components of that list where we might be able to all agree that maybe sometimes a virtual scenario would be correct? I don't want you to respond to that right now and that's not fair of me to do that to you. I'm sorry.

Sam Braverman: Well, I'm ready to respond, but my colleagues-

Hon. Craig Doran: Yeah. But that, I think, is what we are charged to do. We're all servants of the public. We're servants to the constitution, but we have to be mindful of some of these constraints that we operate on. It's not necessarily a matter of efficiency for those counties that have no lawyers that can travel and be present in a courthouse, in a remote town. Sometimes it's a matter of necessity, not just efficiency.

Sam Braverman: Some towns where the judge is not a lawyer.

Hon. Craig Doran: We have that.

Sam Braverman: But both of those.

Hon. Craig Doran: We have a lot of that.

Sam Braverman: It could be the only person in the room is a lawyer is somebody who just came by to watch.

Hon. Craig Doran: And at four o'clock in the afternoon. I don't think that's a path we want to travel down. But you know what-

Sam Braverman: It's a separate problem.

Hon. Craig Doran: Yeah. Yes, it is, yes, it is. So next is Mr. German, who is the executive director of the New York County Defender Services. The floor is yours, sir. Thank you.

Stan German: Thank you Judge. And yeah, at NYCDS we represent around...numbers have changed since the pandemic, but traditionally about between 10, 15, 20,000 individuals charged of crimes in New York County. I'm also on the board of Directors of the Chief Defenders Association of New York and we've had a lot of conversations with public defenders from all over the state. Monroe County, Wyoming County, Washington County.

I'm also the immediate past chair, the American Council of Chief Defenders. So I've spoken to Chief Defenders from all over the country, including the territories of the United States. So if I may be so bold because I'm looking at this quote here on the dais, I don't know if you've had an opportunity to read it, but it speaks about being bold. I'm going to give you all homework. All right. So there are two excellent reports that were put out during the pandemic. I think a lot of people may have missed it because there was a lot going on.

In November of, I believe 2021, the Center for Court Innovation put out a report entitled Learning from the Crisis. It is an excellent look at the system that were forced upon us in March of 2020 and their recommendations about what works, what doesn't work, what's equitable, what's not. They look at the population of folks who are brought to criminal court in two buckets. Because I think when we're speaking about folks who are out, that's a very different bucket than folks who are incarcerated. So I would recommend that.

Internally, I asked my office in April of 2021 to convene a task force because this was all new to us. Virtual courts and hearings. And for the first time in 25 years, Manhattan was doing preliminary hearings. Folks didn't realize that was still in the statute. We had no grand juries. I mean it was the wild, wild west. So we convened folks from trial attorneys, social workers, admin, and they put a report with the Virtual Court and Technology in April of 2021.

I sent that to Judge Marks. I think we were the only public defender organization at the time saying we need to go back to in-person arraignments because all the data shows that judges, not just in New York State, but nationwide, when you're making that determination about whether to detain somebody or not, the outcomes are worse when you do it via video as opposed to having that person in front of you.

But I want to bring a bit of a different lens, and I agree with so much of what was said earlier and by Sam, and I don't think we even need to put people in buckets. I think the things that we heard from the domestic violence survivors about cost, about time, about having to miss work, to go through a hearing. I think that applies to everybody in the system, especially if you're poor. If you're



poor and accused of a crime, it matters. If you're poor and you're being evicted, it matters. If you're poor and you're finding yourself in family court, it matters.

So I think we need to get away from the labels and really just look at it from an equity lens, which is resources. I want to draw everybody's attention to what was a very sobering report by Secretary J Johnson in 2020. One of the quotes is an under-resourced, overburdened New York state court system, the dehumanizing effect it has on litigants and the disparate impact of all this on people of color.

Secretary Johnson goes on to say over and over we heard about the "dehumanizing and demeaning cattle core culture." In these high-volume courts. That's really what I want to talk about, because when you think about what is best and what should be in this report, I'm going to ask one thing of you, and that is view it through a lens of equity, right? Equity, what is equitable? So, when you think about those cattle call culture courts, that unfortunately in Manhattan we are returning to those, right?

It was a system that only prioritized the time of one stakeholder, the bench, and the court system. But what COVID showed us is that a hybrid model, a virtual model, suddenly we brought respect to the time of the individuals appearing before you. Be it public defenders, defense attorneys, prosecutors, clients, people didn't have to miss work. My public defenders don't have to spend 25% of their work week literally just sitting around waiting for a case to be called. We developed a model where you could be in the office, you could be doing research, doing motions, responding to things. "Mr. Herman, you're up next." "Great." Turn on my screen, my client's already on, we do what we have to do in three minutes and we didn't have to waste all that time.

If you think about Judge Rivera's vision, if you are going to allow flexibility to OCA staff, you got to reduce the number of people in the courthouse. So if you're shifting some of these operations that makes sense to do so to a hybrid virtual model, then yeah, maybe that clerk can wait from home. Because on Tuesday, even in upstate New York, that's going to be our virtual day. So I get to work from home and that addresses what everybody's dealing with in this system with the great resignation and every single prospective employee saying, is there remote capability? So I think all of this really works together. I think forget the labels, right? Let's focus on equity.

I think if you bring that equitable perspective to this, I think we're going to end up in a good place. The other thing I will say, and I hear you judge, is in speaking to the chief defender from Wyoming County up in Washington, they have very different systems. So whatever you come up with, it's got to be flexible, right? What's working in New York City with the system with a hundred thousand people going through the criminal courts is not going to work for folks in Wyoming County. We had a whole discussion about pleas, and I'm very adamant, pleas in my office, I want you there in person. Even doing the pandemic, I wanted folks there, right? Because we all know we got to tap on the

show, they're doing a plea and your [inaudible 02:14:48] has seen it and is there a problem? No, no, no. Hold on. Client's got a question. Let me just work it out.

That gets lost in a pandemic setting. But then my friend from Wyoming County said, "Yeah, but Stan, we have a lot of folks who get arrested just driving through Western New York." They may be from Ohio, they may be from Michigan, they may be from Pennsylvania. So are we really going to ask that person to come all the way back to plead guilty to a 511 or some misdemeanor? I was like, "Wow, I never really thought about that, because all my clients are in the five boroughs."

So I think whatever recommendations the committee comes up with, I think flexibility is important. I think consent to Sam's point is important. It can't be just one party saying this is going to be virtual, but if everybody agrees that under this circumstances a plea remotely makes sense, right? Then I think that's acceptable. So flexibility, equity, those are the two things I'm asking of this committee. Thank you.

Hon. Craig Doran: Thank you so much. Anybody have any questions or comments?

Hon. Patria Frias-Colón: Just really quickly in terms of the... And I understand when you're talking about the flexibility and certainly about the equity and the justness of what this should look like moving forward, that's-

#### PART 4 OF 6 ENDS [02:16:04]

Hon. Patria Frias-Colón: critical for all of us to articulate in a way that will be interpreted into a practice. So again, one of the things that I like to know about is what have your clients experienced or preferred? Because as we sit here, we have two members of the defenders groups with somewhat very different perspectives in the approach, and at the end of the day we have to consolidate that and put it in a place that fits for many people. And I'm always very interested in understanding not what you think your clients want or what functions for them, but what do they say about what their preference is.

Stan German: So I'm glad you asked that, judge. And I heard when you asked earlier this afternoon, so we have about 55 attorneys that work arraignments, trial attorneys. All 49 responded to our survey, 84% of their clients preferred the virtual appearance, 16% said no for a host of reasons, so overwhelmingly extremely popular. And I can't tell you the number of times I had a client who was like, "I'm at work. Oh great, I'll step out." We prepared. The person had the conversation, the arraignments took three minutes, they didn't miss work. So I think overwhelmingly people understand that. I do think we do have to question sometimes when we're talking about our jail population. I get it, they get woken up in New York City at four in the morning and they get put on a bus, and so it may be easy for them to say, "I don't need to be there." But no, something

really important is happening and you kind of need to be there. But this focus on the out population and 84% were really happy with the virtual option.

Hon. Patria Frias-Colón: Then we would ask that you incorporate that in any written submissions to the committee, which I think is very important that that voice is part of the dialogue.

Stan German: Absolutely.

Hon. James Murphy: So I'm just going to follow up on Judge Dorn a little bit. It seems like all day we've heard anecdotal stories about one court or one judge who didn't quite handle it right or who was making up their own rules, and so that there seems to be a very strong desire for uniformity, but yet how do we apply that, because Mr. Jman you say we need to get people out of the courtrooms? And I understand that and I'm fortunate enough to be in a district where we have never gone back to kennel calls, we staggered appearances and we've continued that and we've been able to continue that. But to remove people out of family court or county court means we have to do some proceedings virtual because hybrid doesn't solve the people in the courtroom because I still have to man apart, I have to have someone there for the option of someone who says I would like to appear in person.

So I guess the balance and the trick is what may, not a trick, but things we come back to can be done virtually. And I clearly agree with you Mr. Berman. I mean you cannot have trials virtual; you cannot do fact finding hearings. Any fact finding in my opinion, must be done in person absent some major access to justice issue where someone can't get there or we have to come up with something. But what are those things that we could remove and do virtually that maybe aren't... And maybe we can do it by consent, that's fine.

Although I worry about, I know there are some certain clients and defense people who will never consent to anything, and in which case then the court has to set up for both. And I can tell you the jails and the transport do not like that flexibility to all of a sudden have to staff for transport or not. And so I guess that's the challenge. And to the extent, I'm not asking you really to respond now, but I guess when you do submit remarks, be conscious of I think what are those things? Because I think we all know that we would like to have some uniformity, but how do we have that uniformity yet allowing that discretion. That seems to be the rub, I guess

Stan German: It just has to be flexible. I've had the opportunity to travel with Justin Barry, who you all know, and he's the OCA representative for the MacArthur Safety and Justice Challenge, I'm the New York City rep, so we spend a lot of time talking about this over the years and the broad strokes of where there's agreement is what Sam pointed out, arraignments, pleas, trials, sentences, fact finding, that's essential, right? That's in person. But we still have to have flexibility. Can't be so rigid, right? Because I recognize Washington County and Wyoming County and

counties... I know we got a lot of counties but very remote places in the north country.

And so I think we just have to get there in terms of, I think if I'm building out the system, I think for you I'd say, well there's one day that it's a remote day, the courthouse is remote, not hybridizing the same day because that's not going to help your staff or your court officers if you got to come in for three people. So one day in Syracuse we're going to have the remote day and that addresses perhaps what Judge Rivera is trying to get at. And then Tuesday, Wednesday, Thursday are in person days. So I think we could be creative, I think you got to reach out to Silicon Valley and get the tech experts.

I'm serious. Cisco needs to be on this panel to tell you, after hearing and digesting all of these things, how do you operationalize these things? And the state's got to provide funding for it, right? Because I know in the early days Jason was literally looking around because I think there were only two laptops at 100 Center Street and nobody had ever done a virtual arraignment before. So the infrastructure has to be there and the funding has to be there as well.

Hon. Craig Doran: Thank you. Anybody else for these two fine gentlemen? So I'm going to get the last word with you. You said Cisco has to be here. We have Christine Cesario and we have the entire operation of our court system. And I would challenge any private sector entity to do what they did in an instant. And I'm going to brag about the court system for a second. I know it was far from perfect, but if you think about how entrenched the New York state courts are, I'm not a historian, but I believe the New York State court system is older than the federal court system and we converted the entire court system to a virtual operation in a matter of days. In some instances hours, I'm not sure Cisco could have done that. So-

Stan German: Judge, I tell people around the country that before the pandemic, the New York State court system was operating with 19th century mentality and resources, and the pandemic forced us into the 20th century. We're a quarter into the 21st century and I think that's where we need to go.

Hon. Craig Doran: Some other time. But I think we have a lot of distance to cover, but we've made remarkable progress in a short period of time thanks to the partnerships we have with folks like you. So thank you so much for being here.

Stan German: Thank you.

Hon. Tamiko Amaker: Thank you all.

Hon. Craig Doran: We appreciate your [inaudible 02:23:29] So our schedule says we're supposed to take a break now. So could we take about five minutes and get the next group up here so that we cannot have overtime today? Thank you. It'll take five minutes and then we're going to ask Michael...

If we could ask our kind members of our panel to come back up here. Our next presenters are appearing to be hail and hardy and ready to go. Even though you are the last panel of presenters for the day, we assure you that none of us are going to leave before every word is spoken.

So thank you for being here. I'm going to just acknowledge and introduce the members of our panel. And for those of you that... I'm sorry, the members of our presenters group. For those of you that weren't here earlier, what we ask of you, particularly given the hour of the day, is you try to confine your remarks to five minutes as best you can. There might be some interaction afterwards. And also as best you can, please don't read your comments because you can always submit those. We want to hear what's going on in your heart today and then we may also engage you on that. So we are thrilled to have with us on this final panel of presenters for the day, Michael Cervini, who is a sole practitioner here in the city and we appreciate being here today, sir. Mr. Bruce Lederman, who is a partner in the Augustino Levine, Lansman, Letterman, Rivera, and Miraglia, forgive me and please apologize to Mr or Ms-

Bruce Lederman: Miraglia.

Hon. Craig Doran: What is it?

Bruce Lederman: Miraglia.

Hon. Craig Doran: Miraglia. Okay. Thank you for being here. We appreciate your perspective. And Mr. Elias Gootzeit who is an attorney for the child, an 18 B attorney in Westchester County. Thank you, sir, for being here. Courtney Rockett, who is a member of Mince, Levin, Cone, Ferris, [inaudible 02:25:30] and Pepeo.

Courtney Rockett: You got it.

Hon. Craig Doran: Okay. I wanted to allow an opportunity for corrections here. And last but certainly not least, Domenick Napoletano, who is the treasurer of the New York State Bar Association, also the chair of the Pandemic Practices Committee of the New York State Bar Association. Thank you for being here.

Domenick Napoletano: Thanks you, your honor.

Hon. Craig Doran: We are honored to hear you all and we will start with Mr. Cervini, you're remarks please , thank you for being here, sir.

Michael Cervini: Your Honor. Thank you very much. I thank the panel for inviting me. I thank Ms. Mulé for calling me last week and allowing me to speak. I've been practicing about 35 years. I came out of St. John's Law School. I've been practicing on my own since the very first day. My perspective of listening to the panel here now for a little bit, obviously I could tell that the family courts and the criminal courts must take precedence based upon the agency of some of those cases and those

situations. I've been practicing for probably 25 or 30 years in all the city courts, long Island, some Westchester County, litigating cases in Supreme and Civil Courts. My first suggestion or recommendation to this committee is, if I remember correctly, about 10 or 15 years ago, either the OCA or the Bar Association did a study which showed that a very high percentage of practicing attorneys in the state of New York were either solo practitioners or very small firms, one to two, three person operations.

The commission has very distinguished people, very distinguished judges, big law firms, but I don't see representation from those small practitioners on the commission. So when the time comes to make a recommendation, at least from, and I'm going to give you the perspective from the Supreme and Civil Courts in terms of litigating those cases, that you get input right at the end from somebody like myself or somebody that's in a smaller firm. That's my first recommendation. My second recommendation has to do with the word uniform court system, you either have to change it or get rid of it because there is never really uniformity.

Every single county and every single judge to some extent is doing things differently. Now, I'm not here to praise one particular county or being negative about another. Give you a negative example and a positive example. I made a motion in Brooklyn a year ago. The judge said I have to submit a motion calendar response form. Never heard of that form before, so I called a motion support and broker, I got to submit this form, they never heard of it either. But in Queens when you request, you do a motion and you request a PC or a cc, you get a pre-printed form with on or about dates sent to you within three weeks. And to Judge Frias Colon, great praise here, and her predecessor, that civil court has been holding virtual calendars of 150 or so cases a week for the last almost two years, correct judge?

Hon. Patria Frias-Colón: Yeah.

Michael Cervini: And they're doing it 150 cases a week and they're doing it with civility and moving cases along and it brings people together. They settle the cases because you got to solve this backlog. And speaking of the backlog, it sounds like... And I'm going to speak to this personnel issue. I'm on the judiciary committee at Queens County Bar for the last 10 years. We've a very respected judge for reelection about a month and a half ago. They'd been around a long time. There are 2,000 unfilled clerk's position in the system right now. That's my understanding. Listen, e-filing is tremendous, the filing system is great, that's all great, but to some extent you need the people to man it. And if you don't have that it's not going to work. And the problem with that is if I turn around to my clients and say it's going to be three, four, or five years before you get the trial on the civil side, people are going to lose faith in the judicial system.

They're going to say why bother? So maybe some of the focus has to be on making those positions more attractive. That's a big challenge I guess financially, but I guess it's got to be in the budget to happen because you can't walk into a

court building, which some of my secretaries have done recently and said, "Well, we have a question on something we filed." "Oh that part, that office is closed." You can't have that. So those are my three recommendations trying to one, get somebody with my perspective, I'm not necessarily volunteering for the job, but with my perspective at the end of the day, two, to get true uniformity because in the supreme and civil courts, if you can have a standardized form and you can't say you can't do it because on February 1st, 2021, guess what? We created all these new rules regarding motion practice and trials and stuff like that made it mandatory.

I realize you're going to get pushback from some judges and from some administrative judges, but I'm sorry, to some extent they work for the taxpayers, right? And we got to get the system truly uniform. And lastly, it sounds like there's a big personnel problem. When I started practicing, five attorneys could litigate a case for years, settle the case, the court system never knew it existed. So the OCA or the state decided we're going to get involved in this litigation situation. And if you're going to do that, that's a massive undertaking and you got to have the personnel to push it. So those are my three recommendations.

Hon. Craig Doran: Thank you for your very candid and practical perspective. We appreciate it very, very much.

Michael Cervini: Thank you.

Hon. Craig Doran: Go ahead Judge Murphy.

Hon. James Murphy: Well, Mr. Cervini, I guess I would just say to you that you're looking at a solo practitioner of 20 years before I took the bench. Just so you know. I'm very familiar and I practice civilly in Supreme Court in upstate New York as well. So I appreciate very much-

Hon. Craig Doran: Despite that we did put him on this working.

Hon. James Murphy: I don't know if they knew that. I didn't tell anybody. But anyway, I appreciate your comments. Secondly, I think the lack of personnel is something that will be addressed relatively quickly. One of the problems we've had is like everyone else is the great resignation. These were not planned things. These were senior people who just decided in the last 14 months, I'm retiring. In some cases we got two weeks' notice, a month. And it does because there are civil service requirements and everything else, it's longer to bring someone on than it is to have them just give us two- or three-weeks' notice. So I think that the powers that be in OCA have encouraged hiring, we're proceeding that way. It's just going to take a little time. And again, I don't know that it's for lack of planning, it's just part of the new world. And I think that great resignation label probably applies to the court system as well. And-

Michael Cervini: They changed when it comes to the clerks and stuff. They changed the rules. It's no longer 30 years and 55 and you're out. So it's not as attractive a position as it used to be.

Hon. James Murphy: Well, I've heard that except for, I will tell you that we get incredible amount of applicants for each position and I've sat on a lot of hiring panels and I'm pretty... Once we get to that point and we have to work through all that and you have to go through whatever the civil service requirements are, I'm pretty impressed with the panel people we're getting good. And so I think that will, I hope 10 months from now, eight and 10 months from now, you and I will not have that same concern.

Michael Cervini: Well, that'll be a big plus.

Hon. James Murphy: But I do appreciate your comments very much.

Michael Cervini: Thank you very much, judge, and I appreciate you being your background. Thank you.

Hon. Patria Frias-Colón: I also think you should know that your comments do count, so which is why we're having these public hearings and the virtual listening sessions really gave for an incredibly diverse group of people that provided input, including not just self-represented folks, but certainly from small to solo practitioner firms. But the point is very well taken, and thank you for that.

Michael Cervini: And your honor, I participated in one of your calendars about three weeks ago and you handled it expeditiously with civility and with respect to all the attorneys and you got through it. How many cases did you have on it? Must have had a hundred. You did it. Thank you.

Hon. Craig Doran: Anybody else? Thank you so much. Mr. Lederman, floor is yours, sir.

Bruce H. Lederman: Okay. Perhaps a good follow on to what Michael said. I run litigation at a small boutique real estate-oriented firm. We're 10 lawyers, so I guess by Manhattan standards, it's a teeny firm. I wanted to share a couple of thoughts. My practice is predominantly in the Supreme Court, the appellate division, and even argued in the Court of Appeals during the pandemic. I wanted to share a couple of thoughts. One, I found at the Supreme Court level for commercial litigation, I thought the courts did a pretty fantastic job. I tried cases of for [inaudible 02:34:49], I had multiple oral arguments, I argued appeals at both the second and first department remotely, and I found it to be exceptionally effective. My concern and the reason I answered the call, or rather the email that I wanted to participate in is, while some of it is continuing, I'm now hearing from judges, clerks, we're back to normal, we're back to where we were.

And so I'll share a couple of examples of things that I found troubling. So for example, in one of the boroughs of Manhattan, I won't call out names, I don't



think anyone is from borough, we had an old-style massive cattle call motion call, 75 motions, and so it was a calendar call that lasted for hours. I had waited six months for oral argument and then the judge got to me and just said, "Oh, I see this case. I decided I'm going to refer this to another judge. Judge is going to be available since blah, blah, blah." Said come back January 12th. Now, a client had paid me to be there three and a half hours to find out... And I was like, "But judge-" "Counselor, January 12th, another judge is handling that." My thought on that is if it were a remote experience, one, the judge probably would've been prepared and just sent an email saying, I'm referring this case for whatever reasons to another part that I had never even heard of but come back another day.

So in a relatively small case with not a lot involved, it was actually an RPA APL 8 81 case over a \$3,500 a month license fee, I had to charge the client for four hours of my time, and also I lost the day to travel to court and just try to explain to the client I spent this time and I do get paid for my time, but we're coming back on January 12th. So I'm not sure what it accomplished to say we're back to normal. I found the judges that I dealt with were very good at scheduling time. I found appeals, which I don't know if anybody, and I've looked at the list, has spoken about appeals. My experience during the pandemic was I did have one case in Albany at the Court of Appeals where I was actually very surprised in the middle of the pandemic that I was told, if you want to argue, judge [inaudible 02:37:28] wants you to... This is what the clerk told me.

Judge [inaudible 02:37:31] says, you should come to Albany. My wife was totally ballistic, but it was an important case. I got on the train, went to Albany in a mask, and it was a courtroom kind of this size where they had the judges on one side, the lawyers on the other, and nobody else. And I thought as, even though I won, I thought as a matter of advocacy, it was a terrible idea because you're talking to seven people wearing masks. Fortunately, I know some of them recognize some of their voices, but they're over there and you are over there trying to hear and answer questions. And I thought as a matter of advocacy, it was a disaster. I won the case, so I'm not upset, but I don't think it worked. I had, I think, two or three remote hearings on appeals in the first and second department, and I found they worked really well.

I found Zoom worked really well for oral arguments. You're sitting there and very collegial and as somebody in the prior panel says, you're sitting there with your screen dark and you hear Mr. Lederman and you go on, and the client doesn't have to pay you for an afternoon there. And I talk in terms of my client base, who's not an [inaudible 02:38:45] 100 client base, is sensitive to cost. And I found it worked, although now I understand both the first and second department are again back to normal, and want you to come in and you sit in the court and it is beautiful and it's, as an advocate, it's kind of nice you're sitting in magnificent courthouses, but I don't think it's effective and I don't think it's necessary. I recognize in what I do, which is commercially oriented, largely real estate business work, I have clients who can afford to be on Zoom.

I'm used to the technology, so perhaps not all are, but I'd urge the court to consider, as I think a lot of people have, that it should be a choice, not a matter of the judge saying, I like the way we used to do it with 70 cases because I just found, and that was just a few weeks ago, it just reminded me of how bad the system used to be and how much better it can be. And again, I do really commend the court system that I think the court system for the two years we were locked down for commercial litigation did a fantastic job.

Hon. Craig Doran: Thank you very much Mr. Lederman. Anybody have any questions or comments? Go ahead.

Hon. Tamiko Amaker: Thank you very much for your testimony, Mr. Lederman. I just have a question. We had a judge from the commercial division testify earlier, and I'm not naming any names, but I read [inaudible 02:40:19]

Bruce H. Lederman: Because I have to be polite, judge.

Hon. Tamiko Amaker: Well, she actually testified that she had, I think, she had done like 12 trials and decided over 360 something motions and all done virtually since the pandemic began. And that she doesn't have any plans to go back to being in person unless perhaps a jury trial, although she was open to the possibility of even doing that virtually. So my question for you, again without naming any names, are you finding that some judges are still doing everything primarily virtually or is it just depends on the judge and even the type of proceeding, whether it should be in person or virtually?

Bruce H. Lederman: I see. I have found it really depends on the judge. I do find, and maybe it's the nature of the part, that the commercial parts are more technology oriented. I know Judge Shaman, when he ran technology, was pushing that in pilot programs initially in the commercial parts. And I'm not surprised, and I did see Judge Crane had testified. I haven't had something recently before her, but I'm not at all surprised knowing her that she said that. I can't think of a commercial judge who has insisted that I be there. I do have one judge, and to be fair, another I think very fine Manhattan Supreme Court judge, who something came up on an oral argument and we just got a call the night before, "I really want you to come in." And we came in and the case settled and she said to me, and she knows me, she just said, "Mr. Lederman, I knew if I made you come in, I would get the case settled."

And so I do understand that part, maybe it would've, it wouldn't have. And again, it was a commercial dispute and she had read the motion and very good judge and it was supposed to be a virtual that she just sent out an email the night before. And I was a little surprised, but all right, judge, so and so wants me to come in and we did settle the case, so I can't say she was wrong on that. But again, I would say it should not be, let's get back to the way things were because at least for the type of practice I have, which is a small to medium-sized practice with non-Fortune 500, cost-conscious clients, the hardest thing is to explain to a

client that you're billing them for an entire day for really about 10 minutes of work.

Hon. Craig Doran: Jessica.

Jessica Cherry: Thank you, judge. Thank you so much for your testimony. I do a lot of civil work, so I always like to hear from the civil practitioners. And my question is, do you have a position or thoughts about how you feel about remote depositions versus in depositions, in the relationship of on consent there? Have you come across that and how's that worked for you in your practice?

Bruce H. Lederman: I did two remote depositions last week, both of which I thought went extremely well. I have a case right now in Albany where I want to do remote depositions, but the judge says, "Well, you have to have consent." I'm not sure that you should have to have consent because I deal with a certain number of clients overseas. The deposition I had last Wednesday, it happened that my client from overseas was in America and I was able to schedule around it and it was a remote deposition. But in answer to your question, I have found remote depositions work very well.

There's a slight learning curve till you get used to it and you have to become a little more adept at sharing your screen than everybody is, but I think in two years of pandemic practice, a lot of practitioners have learned what to do. And I had seen something in the notes, perhaps the court system can make available some Zoom conferencing or a Zoom instruction for people who need it. It took me a little while. I was lucky because my wife, who's a fourth-grade teacher had been teaching remotely, and whenever I needed a problem, she would come in and set up and I'd be like, "Can you tell your class to wait five minutes? I've got an appeal." And she would come in.

But by this point, I have found I'm comfortable with the technology, I found most lawyers are, and I think depositions really are much better. There's no reason that people have to travel and waste time. The only thing, I'll just add one caveat, in the two depositions I did last week, in one of them, the reporter was in the room with the witness and that one went really smooth. In the other, we were supposed to have the reporter in the room, but then the reporter called that she didn't feel well and she thought she might have covid, but she could still do it. So everybody's like, all right, we only had an hour and they couldn't get another reporter there. And when we did it with the witness in Zoom and the reporter somewhere else, I didn't think it was as smooth.

Jessica Cherry: Okay.

Bruce H. Lederman: So I did find a reporter should physically be in the room with the witness.

Jessica Cherry: Great. Thank you for your thoughts. Appreciate it.

Hon. Craig Doran: Anybody else? Thank you, Mr. Gootzeit, the floor is yours.

Elias S. Gootzeit: Thank you, sir. I'm here as a single person, courtroom office attorney for the child 18 B attorney. I'm also an LCSW who served 15 years on the Director for Mental Health Professionals for the first and second department. And I've probably done hundreds of cases in all of those categories.

And I stopped doing the mental health stuff, not because I didn't love to do it and because I figured out a way to see kids in the park with folding chairs so I didn't have to worry about covid and stuff like that, but the county of Westchester figured out a way not to pay me. And the way they figured out not to pay me was they required an original signature from the judge on an original voucher in the middle of the pandemic, which you couldn't get because the clerks weren't taking the paper from anybody. And they were telling us to do it by scan. So if I scanned the voucher, and I had the original document number and the red number that comes up on top of the voucher, that should have been enough with an original signature from the judge, but it wasn't. And so I ended up with 15 vouchers, which is not a big deal for most people that have been testifying, but it was my income, that's how I paid my rent.

And I went to Judge Ajudo, he's chief judge up for the Family Court up there, and he was sure he could solve the problem and he couldn't. He had no authority over the Westchester County Finance Department and couldn't get there. And I took it to the AFC panel, because I'm an AFC person also and I'm on their list, and they couldn't help me either. And I suspect I left a lot of money on the table because I got tired of spending more time on trying to get paid than trying to see a kid. So I know it's been a while since I did it because I tried to use my easy pass, not my easy pass, my metro card, and it had expired in January 2021, so that's when I stopped. And that's too bad because if you go up to Westchester and talk to the Family Court judges, there are very few mental health experts available.

And if you are a working family and the AFC panel won't pay for it and the judge won't pay for it through 18 B, they're going to charge you \$200 plus an hour for the service. I charge \$75 an hour as an appointed counsel to a private pay person because I know \$75 is hard for people to pay. You understand what I'm saying? And middle-income people are the only people that can't get through the family court if they need expert forensic assessment, and I do expert forensic assessment. I observe people with their kids, the noncustodial fellow or lady in wherever they are, and I'll see them in the park. There was a young lady I saw in Brooklyn in the park by the bridge because that's where she lived in secret from her husband and didn't want him to know where she lived.

So I bring that to your attention because somehow you guys figured out, not you guys, but the state of New York figured out, how I can drive through a bridge on the Henry Hudson Parkway and get through the bridge and get billed and have everybody get paid, whether it was the city of New York or the state of New York, depending on what toll I was going through on the same piece of

equipment. And somehow, I have a card, an ID card as an attorney, that you guys can't figure out how to swipe to get me paid and I should be able to put in the code and the judge

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Elias S. Gootzeit: is going to tell you whether I did the work that day or not, or whether I submitted the report on time or not, and figure out how that's going to get done. So, I'm here for a very self-serving purpose is for you guys to figure out how I can do what... I'm sorry. Running out of time and I can't do this at the same time. I'm sorry. But I thought my clients were worth more than what I was getting paid and that's why I was willing to go for the \$75.

And I noticed a bunch of my colleagues who stayed out a day to let you guys know they were worth more than \$75 an hour doing 18B work. And I do 18B work as well. And I do AFC work, but I also know that the system at some point isn't going to pay for what we do. And I don't think what I do should be so difficult to get paid for. It shouldn't take more time for me to get paid than it does for me to do the work. And I bring that to your attention, because I noticed that there was a Blue Ribbon panel that maybe you guys want to talk to that says that forensic mental health evaluators aren't needed in custodial cases. And that commission had a vote of 11 to nine that said get rid of the forensic evaluators. And that was last January. This past January.

How are you going to make a requirement of mental fitness on a parent and not have a forensic evaluation? But you've set up a system where the guy who's paying... If I go for a forensic evaluation in Westchester County for an entire family, \$8,000. \$8,000 and he's got a waiting list, he could charge maybe more. And there's one guy that I noted does it, maybe two. And he's the only guy who does it. And then there's the WJCS does it. But there's so many people on that list that they're not taking people most of the time.

Hon. Craig Doran: Mr. Gootzeit, I'm sorry to interrupt you.

Elias S. Gootzeit: I know I'm running out of time.

Hon. Craig Doran: That's okay. I want to respond to the point that I think is well within of many points that you've made within our purview to make recommendations about. And that is, next time our operation is interrupted, how can we make sure that there's a better system in place to make to assure that you and your colleagues who are doing this very important work, are compensated for it. Judge Murphy, will remember. During those early days of the pandemic, we in some of the regions of the state enacted measures to bypass the usual process to make sure that that money kept flowing to you and your colleagues.

Elias S. Gootzeit: They couldn't bypass the county.

Hon. Craig Doran: Pardon me.

Elias S. Gootzeit: Judge [inaudible 02:53:02] tried to do what you said, he couldn't get past the county.

Hon. Craig Doran: Right. And that's because we didn't have a procedure in place. We didn't have uniformity. It's a big state. There's different departments of the appellate division, the appellate division's involved in approving those vouchers, in some instances, the county's involved in approving those vouchers in some instances. And we didn't know the pandemic was coming. And when it did, we were caught short on making sure that your colleagues get paid. We shouldn't let that happen again. So, our deliberations and our recommendations will include a discussion about how we can make the process better, more uniform so that doesn't happen again when court operations are interrupted. Anybody else have any comments or questions for the gentlemen?

Hon. James Murphy: I do.

Hon. Craig Doran: Go ahead, sir.

Hon. James Murphy: Sir, I'm sorry for what happened to you, because I think that's awful. And Judge Doran's right. And I guess I would ask you, because I have no familiarity with how it works in Westchester County. I know how it works in my six counties, and we administratively approve those, because we couldn't get the judge to come back in to review the voucher. So, we administer, I know Judge Doran and I both, I think, we did administratively waive that requirement and approve those settlements. And also working with the PJ and the fourth Judge Wayland, we took care of the AFC vouchers. So, if I don't know how Westchester County works, but I guess I would ask you if you could submit something to us being as particular on that process. So, as Judge Doran mentions, we would know the next time hopefully that it would not happen.

Elias S. Gootzeit: I would just suggest that as well as the second department does their billing on AFC, they could figure out how to do that for everybody. Use the same computer, use the same voucher system, and let the county figure out when to pay for it.

Hon. Craig Doran: Okay, thank you. Thank you very much for your input, sir. We appreciate you being here. Ms. Rockett, whenever you're ready.

Courtney Rockett: A little uncomfortable following that up with a perspective from big law. But I'm going to do it anyway and go quickly. So, I've been practicing for over 25 years. In the middle of COVID, I left Boise Schiller Flexner to join Mintz Levin at a time when the law firm was completely virtual. My practice at the time was primarily focused on the commercial division in White Plains and in federal courts around the country. And I'm also here speaking on behalf of the ninth Judicial district leader for the commercial and federal litigation section of the New York State

Bar Association. And the opinions I'm expressing are shared by most, if not all of my colleagues, on several fronts. So, it is certainly the consensus that moving forward the use of video technology should continue to the greatest extent possible with the exception of non-emergency trials.

We can talk about that later. But there are some instances of professional misconduct that have resulted from the use of video technology. Some of these can be fixed with technological solutions to rein them in. But while we're going as virtual as we can to get things resolved as quickly as we can, we do need to take note of these. So, for instance, the use of video conferencing and Teams for informal hearings and discovery dispute resolution is terrific. However, there often is not a court reporter involved in informal hearings and no court reporter transcripts, and the attorneys are not permitted to record Zoom conferences.

So, we would strongly encourage Chambers and the judges to use the Zoom auto record feature, because after these hearings, and again, this is a way to move things along quickly during the pandemic or any other time, if the judge believes that they resolved an issue, and the attorneys after the informal hearing without a transcript decide that they disagree with what the judge directed them to do, no matter how plainly, there's no way to bring the issue back before the judge if their notes don't indicate what was said, et cetera.

So, at the very least, the auto record button should be used. So, if there is a dispute between the attorneys, there is some form of relief in going back to the record, even when the court reporter is present for the hearing, the Teams auto record features should also be used. The transcripts that come out from video hearings are a lot worse than live court reporter transcripts, because of connectivity problems. So, just as a safeguard, the auto function should be used on the app whenever possible, whether it be Teams, Zoom or what have you. Moving on to depositions, this is the hot topic because now people in practice, especially in commercial and federal cases, assume that video deposition is the custom in practice. And many attorneys try to prevent live depositions from taking place post-COVID even when there are no health issues at play.

Attorneys are still tending to delay and prevent depositions from taking place based on claims of quarantine exposure, et cetera. And it is becoming abused and there might need to be some form of certification requirement if depositions are going to continue to be pushed and delayed. And then critically, the use of video technology is causing substantial problems from a professionalism standpoint. There are attorneys who are sitting next to the witnesses during depositions, and occasionally during hearings, thank God not during live trials. But you can imagine the increase in speaking objections and improper conduct during both depositions, and video recorded hearings where you can't see the attorney on their own screen. So, if an attorney is going to be present in the room with a client, they should have either their own computer facing them, they should be on a different side of the table, the court reporter or the videographer should be able to Zoom out, so you can see what's going on in the room.

Another issue similarly raised by the technology is some attorneys ship binders to the witness and don't have electronic copies available, or will use different electronic exhibits that they upload during the deposition. And they don't present them at the same time to their council, to the witness's council. So, obviously, when we were all in the same room, you hand the exhibit to the witness, you hand the exhibit to council, everybody's looking at the same thing, knows what's happening. There's got to be control over the programs that are used. Obviously, this is a boon huge market right now, but we need to control some of these systems to ensure that the attorneys for the witness are being shown the exact same exhibit that the witness is being shown. The witness needs to be able to access freely that exhibit and scroll through it. There have been too many depositions where the attorney taking the deposition pulls up and controls the exhibit, and directs a party to a specific page and just pulls that up on the screen.

The witness isn't allowed to scroll through on their own, or if they ask to, it could take half an hour for them to go as slow, line by line. So, I understand that this is not really a technology problem that this panel is looking into, but I do think that we need to be mindful as we move. If this is going to become the norm, we need to be aware of the problems that it's raising within the practice for... I do have some good news there. The technology is going to give us ways to greatly improve efficiency with the attorneys. And I do have some ideas, including an amendment to the notice of appearance that could now require an attorney to provide their mobile phone number, which can be held confidential with the OCA. The form could be rejected without the mobile number, unless of course your pro se, so that an attorney can be auto-enrolled in e-Track and text messaging. And now both for Teams invitations.

And for eTrack invitations, there's a problem that there's no ability to automatically download these links into your calendar. So, attorneys, when you get an email from a judge from Chambers with your hearing, Teams invitation, if it's just in an email, you can manually, of course, enter it into your calendar. But all of these apps do have the ability to auto calendar. So, whatever needs to be done for Teams use, in particular, it would be very helpful to have it auto-populate the attorneys' calendar. We've all seen the technological glitches that take place in hearings and people lose a lot of time. And I understand that it's a personnel issue. Whether there's somebody in chambers that's a dedicated person for chambers or for the court, I think we'd all love to see attorneys be required to appear at least 15 minutes, maybe earlier before any scheduled hearing time, and some designated court personnel or chambers personnel to check the technology, to confirm that it's working before the hearing starts.

And of course, attorney education can go a long way. We've done CLEs for the commercial division that Judge Scheinkman set up his courtroom with technology in the Westchester Commercial Division room. And we've created CLEs that are on the shelf to teach attorneys how to use the technology inside the courtroom. And similar CLEs can and should be prepared to teach all attorneys and even pro se litigants and clients really, because they're doing a lot



on their own now without the attorney in the room, how to use the technology that we're using today for video hearings, video conferencing, video depositions. And these are easy CLEs filmed. Have them in online for access at will. Any questions?

Hon. Craig Doran: That's excellent. Thank you for those detailed suggestions. Certainly, the area of depositions is one that begs I think for some guidance, uniformity, et cetera. So, we appreciate your real insight into that process. Anybody? Questions or comments?

Hon. Patria Frias-Colón: I did appreciate your suggestion about using court reporters. I do a lot of preliminary conferences, a lot of settlement conferences beyond the calendar calls. And the point is very well taken because I think it is important, and I've had the situation where council can't remember, but my notes are very, very detailed. And so, I've been fortunate that they've been confident that my notes based on their experiences before me, but the court reporter really seals it. So, I think that's an excellent suggestion for purposes of settlement, preliminary hearings, discovery conferences, and I will take that back. So, thank you for that.

Courtney Rockett: Thank you, Your Honor.

Hon. Craig Doran: If we have court reporters available. Which is a big if. Some corners of the state. Thank you. Mr. Napoletano. We're going to have a difficult time hearing you, Mr. Berman, way back there. So, maybe if you want to say something, you can, after Mr. Napolitano is done, you can come up and grab a microphone. Okay. Thank you, Mr. Kutze. Mr. Napoletano, you are the grand finale of what has been a very intense, long but informative day. You have the closing argument. We're thrilled that you're here. And I mentioned some of your colleagues earlier who were here representing the State Bar that we are grateful for the partnership that we have with the State Bar. The floor is yours, sir.

Domenick Napoletano: Thank you, sir. Good afternoon, everyone. You know what they say about the last person to speak, I stand between you, dinner, or whatever else you have planned for the evening. I'm going to speak about my own personal experiences. I have been practicing more as a solo practitioner for over 40 years. Primarily here in the city, on occasion, out in Long Island, but not as far as Suffolk County. That to me is just of the world. I co-chaired the COVID-19 Emergency Taskforce for solo and small firm practitioners at the very outset of the pandemic in March of 2020. That taskforce was put together by past President Hank Greenberg, who was an esteemed member of this Commission. The taskforce, I believe, accomplished a lot. We have uploaded, what we've called, the blueprint. We didn't call it a report, we call it a blueprint, because it is basically a step-by-step look at what could possibly happen in the future.

If, God forbid, we get stuck with another pandemic or something similar, it's all there. It's all laid out. All of the things that we've been talking about today has already been taken into account in the blueprint. For example, throughout this commission's public hearings as you've heard about virtual as opposed to in-

person appearances. I am a very strong proponent of virtual and not in-person. And I'll tell you why. Before the pandemic, if I was in Supreme Kings on a PC conference, I would submit the PC conference order. It would go in a basket. I would sit and wait for a court attorney to call myself and my adversary in a little room. We would sit there, go over it. If changes needed to be made, they were made. If not, so be it. And then we were told to wait for the order to be signed.

We could wait there; we have the entire day. If it wasn't signed by the judge, whomever, it was presiding in that part, by lunchtime at one o'clock, we would be told to come back at two 30 simply to pick up a piece of paper, for no other reason. Those are hours that are spent unnecessarily just sitting around. I could be much more efficient sitting in front of my computer in my office doing 15 other things during that time that I'm waiting for something to happen. Now, we submit all of our PC conferences, compliance conferences, final note of issue part conferences, all virtually. Submit them on ISIF, we wait a day or two, maybe three, and we get an order, as opposed to waiting an entire hour for nothing. I have done, during this pandemic, both virtual trials and in-person trials.

I had an in-person trial within three months of the pandemic hitting, believe it or not. It was a horror, only because we were in a courtroom, which was very spacious at 320 J Street, but everyone had to wear a mask. And my client, who was an elderly woman, was very a low, speaker to begin with. It was near to impossible to hear her testify. So, I had to, and the court as well, had to say to her, "Please, keep your voice up." Again, for an elderly person who has difficulty doing that to begin with, but wearing a mask makes it that much more impossible. On the virtual trial side of things, the handicap that I see, unless we can fix the problem, is how documents are uploaded and then you have to see them on the screen and you could be there for hours trying to scroll down to a document that's being evidenced to a witness for its admission.

So, there were glitches that still need to be worked out. However, I firmly, as I said, believe that the continuation of PC conferences, compliance conferences, hearings, which I've had as well, and will continue to have until I'm told to otherwise come in, which I'm being told that also, I think that is the way to go. It makes much more sense to do that, especially for me as a solo practitioner. Before the pandemic, I would have to run from courtroom A, B, C, and D within the same building, only to be late for one part or another. And to perhaps get my case dismissed because I wasn't there. Or better yet, to run from 141 Livingston Street where the civil court is, as the judge knows, to 360 Adam Street, where the Supreme Court is, and perhaps be late there as well. So, I think that if we continue to keep things virtually, it makes better sense.

Again, I'm speaking for myself as a solo practitioner. Large firms have the ability to keep a lot of people busy. So, when I heard from a colleague who is in a rather big firm, they're losing money with Teams. Because a Teams conference only lasts 15 minutes. And they can't send five lawyers to sit around the whole day and build a client for the whole day. So, while I can't commiserate with that, while I feel bad for them, I have to feel bad for myself first. So, I just want to

point out, council mentioned about the vouchers. The taskforce that I co-chaired, as I mentioned before, I thought, and, Your Honor confirmed this, did take care of getting people paid. We pushed that in the taskforce. We wrote those letters so that those things can happen. So, I'm proud at least for having accomplished that.

I'm sorry that council was not perhaps part of that mix. He most certainly should have been and should be in the future. On the issue of virtual depositions and consent, I also co-chaired the CPR committee for three years, and I'm still on that committee. We pushed for a legislative proposal to do away with, Sherry's shaking her head, we pushed for legislative proposal to do away with the issue of consent. Because it doesn't make sense. You can get into a pissing contest with your adversary about why should we do this as opposed to that. So, I just want to end by saying one thing. Part of my practice is civil litigation. In the past, I did some criminal work, but after having gotten an acquittal in the Eastern district and not getting paid, I gave that up.

I do a lot of housing work. I don't know how many people have come before this commission that have spoken about the housing court. While in the beginning, we were doing things virtually, we're back to in person. I was there this morning in the commercial part of the housing court on in order to show course. I said to a colleague, "This looks like it used to be before, that's not good." Because that courthouse brings in on the average 3000 people a day. And people are packed into little, small courtrooms.

They're talking about the pandemic coming back with all of these various variants that there are. I've already gotten my fifth shot, so I'm not really worried about that. At least I shouldn't be perhaps. But the housing court, I think, should have a hybrid option available. Some judges are allowing it, but most of them aren't. And those that are, are requesting that the attorney, not so much the litigant, provide an ADA excuse why they should be virtual and not in person. And that to me makes no sense at all. So, we've challenged that. We've gotten pushback on it, but I think that's something that this commission should at least think about and look into, because it makes no sense. I thank you very much for your time. I hope I stayed within my five minutes.

Hon. Craig Doran: Thank you so much, Mr. Napoletano. Even if you didn't, it's okay.

Domenick Napolentino: Okay.

Hon. Craig Doran: Anybody?

Jessica Cherry: Just one question.

Hon. Craig Doran: Yes, Jessica.

Jessica Cherry: Housing. I got it. Don't worry. I'm sorry. We hear a lot from landlord-tenant. We've heard a lot from the landlord-tenant perspective. But you stated a commercial tenant.

Domenick Napolentino: It's the commercial part of the landlord-

Jessica Cherry: Yeah, the commercial. From your perspective with commercial clients, have you found that they prefer in-person versus virtual more over the other? A judge's question, but-

Domenick Napolentino: No, actually they would prefer virtual.

Jessica Cherry: Okay.

Domenick Napolentino: They very much would prefer virtual.

Hon. Craig Doran: Anybody else? Thank you. I know Mr. Berman, you are a member of this working group, so you're not allowed to give testimony. It's against the rules. But you've been chopping at the bit to say something. So, go ahead right ahead.

Mark Berman: I know Mr. Lederman, Mr. Napolitano and Miss Rockett. The watch road here is uniformity, but flexibility. Each one of my colleagues here practices in different courts. So, you heard experiences from different courts. I practice commercial litigation in all the five boroughs. The protocols and standards in 60 Center is very, very different than Adam Street. Very, very different than in Jamaica, Queens. So, I think it's incumbent upon, we do need uniformity, we do need to work with the AJs from each of the judicial districts. And all their experiences, the good, the bad, and the ugly, I've encountered.

Depositions, we've heard some terrific things about virtual depositions. I've probably taken 20, 30, 40 during the pandemic of all different shapes and sizes. And Miss. Rockett is correct that they get hanky at times. It's not as the panacea of all for them, but the rules of engagement have to be much clearer than they are. Because everything doesn't work as smoothly with documents, and coaching, and people on various sides, and whoever suggested some sort of a certification. I think that would give people some religion to behave themselves.

Hon. Craig Doran: So, Mr. Berman, you've just demonstrated why we selected you to be part of our Pandemic Practices Working Group. Just by way of closing this remarkable, tremendous day that we've all experienced, very informative day, the next steps for us will be to collate everything that we've gathered throughout this process, throughout the last several months and those that have participated today. My thanks to my colleagues on the panel this afternoon and this morning, and to everyone who's here, everybody who came here earlier today, we're going to have a very robust tremendously credible set of recommendations that will be based upon the input of hundreds people that actually do the work in the courts of this state. So, I'm grateful to everybody. I'm grateful for the privilege of being

involved in this. And I assure everybody within the sound of my voice that in the next few weeks, we will have taken into consideration all of the input that we've received.

Scott Reents and his folks are going to write a tremendous report that will be reflective of the input that we have received. So, look for that coming out at some point toward the end of this calendar year. But the process will be ongoing after that. This process of listening to each other and learning from each other, that is the key to success. So, my thanks to everybody. My thanks to the City Bar Association, we may have overstayed our welcome here. Nobody's coming in here to throw us out. Kevin, thank you for your work today in the live stream. I believe that concludes our proceedings. Travel safely, everybody.

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